

Bikai and ors. Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Mar-16-2004

Reported in : 2004(2)MPHT281; 2004(2)MPLJ19

Judge : S.P. Khare and ;Ajit Singh, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 302; [Evidence Act, 1872](#) - Sections 32

Appeal No. : Criminal Appeal No. 2697/98

Appellant : Bikai and ors.

Respondent : State of M.P.

Advocate for Def. : G.S. Ahluwalia, Dy. Adv. General

Advocate for Pet/Ap. : D.C. Jain, Adv.

Judgement :

S.P. Khare, J.

1. The appellants have been convicted under Section 302/34, IPC and sentenced to imprisonment for life and to a fine of Rs. 500/- each.

2. It is not in dispute that deceased Babybai was married to accused Bikai. Their marriage had taken place five years before the incident. The Gauna took place

about two years ago. Babybai sustained burn injuries in the intervening night of 12th and 13th July, 1997 in Village Khad in the house of her husband. She died on 13-7-1997. Accused Bulakibai is her mother-in-law and accused Chutkun is her father-in-law. Deceased Babybai had no issue.

3. The prosecution case is that there used to be quarrel between Babybai and the accused persons as she had not been able to beget any child. According to the prosecution the accused persons poured kerosene on the body of Babybai when she was sleeping on a cot in her room and set her on fire. The information was sent to Sunderlal (P.W. 1) and Sudhribai (P.W. 2) who are parents of the deceased. They came to Village Khad and saw their daughter. Sunderlal (P.W. 1) lodged the report (Ex. P-1) at Jaisinghnagar on 13-7-1997 at 6.30 A.M. Babybai was admitted in Jaisinghnagar Hospital. Her dying declaration (Ex. P-14) was recorded by K.S. Sen (P.W. 11), Executive Magistrate on 13-7-1997. According to him he began recording the dying declaration at 7.15 A.M. and finished it at 7.40 A.M. Dr. Sampurnanand (P.W. 8) certified that Babybai was conscious and in a fit condition to give her statement. It is also the prosecution case that certain articles were seized from the place of incident and these were sent to the Forensic Science Laboratory, Sagar and as per report (Ex. P-29) of this laboratory, presence of kerosene was detected on some of the articles. Kerosene was also found on the clothes which the deceased was wearing at the time of the incident.

4. The accused persons pleaded not guilty. They have not set up any specific defence.

5. The Trial Court found that the dying declaration of the deceased is true and voluntary and on that basis convicted and sentenced the appellants as stated at the outset.

6. In this appeal it has been argued that the dying declaration is vague and the deceased was sleeping when her body is said to have been set on fire and therefore, she could not have seen the person who actually poured the kerosene on her and ignited the fire. It is also argued that some of the witnesses of the neighbourhood who have been declared hostile have stated that the deceased made a declaration after the incident that she caught fire while cooking food and

therefore, it can not be said that the deceased was set on fire by the accused persons. It is also contended that there is no specific evidence on the point who poured the kerosene and who ignited the fire and therefore, the accused persons can not be convicted on the basis of vague declaration of the deceased that they were found standing near her when she got up after her body caught fire. It is also pointed out that father-in-law and the mother-in-law of the deceased actually tried to save the deceased from being burnt and in that process father-in-law also sustained injury to his hand and therefore, they deserve the benefit of doubt.

7. The evidence on record has been scrutinised by us in light of the arguments raised on behalf of the appellants. K.S. Sen (P.W. 11) was Naib Tehsildar and Executive Magistrate. He has deposed that on 13-7-1997 he received information from the police that the dying declaration is to be recorded in Jaisinghnagar Hospital. He went there. He obtained the certificate of Dr. Sampurnanand Dubey (P.W. 8) to the effect that Babybai was in a fit condition to make her statement and then he commenced recording her dying declaration. According to him he recorded dying declaration of Babybai as per statement made by her and that is Ex. P-14. He commenced recording the dying declaration at 7.15 AM. and finished it at 7.40 A.M. He obtained the thumb impression of the declarant. He also obtained certificate of the doctor at the end of the declaration that Babybai was conscious throughout and was in a condition to give her statement. He has also stated that no police officer or any relation of the deceased was present at the time he recorded the dying declaration.

8. According to the dying declaration (Ex. P-14), the deceased was sleeping and she got up when she was set on fire. After waking up she saw her father-in-law, mother-in-law and her husband near her cot. Again in Para 3 she has stated that she was set on fire when she was sleeping. She has further stated that her mother-in-law used to say that she does not want to keep her in her house as she has no child. She has further stated that she was brought to Jaisinghnagar Hospital by her parents, father-in-law, mother-in-law and husband. A close scrutiny of this dying declaration shows that the names of the three accused persons have been taken by the deceased as the perpetrators of the crime. But at the same time she has stated that she was sleeping when she was set on fire and she could not

see the specific part played by each of the appellants.

9; Sunderlal (P.W.

1) is father of the deceased. He has deposed that he went to the house of father-in-law of his daughter on hearing the news that she has caught fire but she did not tell him anything in the village how she caught fire as she was not able to speak. In cross-examination he has stated that accused Bikai who is husband of his daughter was having separate food from his parents. Sudhribai (P.W.

2) has also deposed that when she reached Village Khad her daughter was alive but she was not able to speak. From the testimony of these two witnesses it is clear that deceased Babybai did not make any statement in the village. Balkaran (P.W. 3), Sarju Prasad (P.W.

4) and Jageshwar (P.W.

5) are neighbours of the accused persons and they have been declared hostile. They have resiled from their statements under Section 161, Cr.PC. They have tried to support the accused persons by deposing that deceased Babybai had made a declaration that she caught fire when she was cooking food. It is difficult to believe this part of the evidence of these witnesses as there could be no cooking at about 12 O'clock in the night. Dr. Sampurnanand (P.W.

8) has deposed that he examined Babybai when she was alive. But he is not in a position to say whether it is a case of suicide or homicide. M.A. Khan (P.W.

17) is the Investigating Officer. He has deposed that on 13-7-1997 he recovered certain articles from the place of incident as per seizure memo (Ex. P-24) and these were sent to the Forensic Science Laboratory in sealed condition. The report of the laboratory is Ex. P-29 which shows that kerosene was found on these articles. That rules out the theory of accidental fire as spoken by the three hostile witnesses. Ram (D.W.

1) has stated that deceased Babybai had made a declaration in her house that she has caught fire while cooking the food. This witness has further stated that

Sunderlal (P.W. 1), father of the deceased, asked his daughter to implicate the three accused persons and also asked her to make such a statement before the Magistrate. Babulal (D.W.

2) and Vijay Kumar (D.W.

3) have deposed that the accused persons were trying to extinguish the fire when they reached the spot.

10. From the entire evidence on record and the dying declaration (Ex. P-14) we are of the opinion that appellants Bulakibai and Chutkun Choudhary deserve benefit of doubt. According to the dying declaration they were standing with accused Bikai near the cot of the deceased. The dying declaration does not show any specific part played by accused Bulakibai and Chutkun Choudhary. It is not unlikely that they reached near the cot of the deceased after hearing the noise. They were living separate from their son Bikai. That has been admitted by Sunderlal (P.W. 1), father of the deceased. When the parents of Bikai were having separate mess, it is difficult to say beyond reasonable doubt that they participated in the commission of this crime. However, so far as accused Bikai is concerned, he must be held guilty for the offence punishable under Section 302, IPC. It was not a case of suicide. The dying declaration of the deceased so far as it implicates her husband is true. Accused Bikai has not offered any explanation either during the course of investigation of trial how his wife sustained injuries. He must have been with her' in the night and therefore, it is expected that he should explain how his wife sustained fire injuries. The finding of the Trial Court that accused Bikai caused the death of his wife by setting her on fire is correct.

11. The Supreme Court has held in *Laxmi v. Om Prakash*, AIR 2001 SC 2383 that : 'a dying declaration not being a deposition in Court, neither made on oath nor in the presence of the accused and therefore not tested by cross-examination is yet admissible in evidence as an exception to the general rule against the admissibility of hearsay. The admissibility is founded on the principle of necessity. A dying declaration, if found reliable, can form the basis of conviction. A Court of facts is not excluded from acting upon an uncorroborated dying declaration for finding conviction. A dying declaration, as a piece of evidence, stands on the same footing

as any other piece of evidence. It has to be judged and appreciated in the light of the surrounding circumstances and its weight determined by reference to the principles governing the weighing of evidence. It is as if the maker of the dying declaration was present in the Court, making a statement, stating the facts contained in the declaration, with the difference that the declaration is not a statement on oath and the maker thereof can not be subjected to cross-examination. The weak points of a dying declaration serve to put the Court on its guard while testing its reliability and impose on the Court an obligation to closely scrutinise all the relevant attendant circumstances. If in a given case a particular dying declaration suffers from any infirmities, either of its own or as disclosed by other evidence adduced in the case or circumstances coming to its notice, the Court may as a rule of prudence look for corroboration and if the infirmities be such as render the dying declaration so infirm as to prick the conscience of the Court, the same may be refused to be accepted as forming a safe basis for conviction'.

12. Again in *Uka Ram v. State of Rajasthan*, AIR 2001 SC 1814, the same legal position has been stated. It has been held that 'the admissibility of the dying declaration rests upon the principle that a sense of impending death produces in a man's mind the same feeling as that of a conscientious and virtuous man under oath *nemo moriturus praesumitur mentire*, i.e., a man will not meet his Maker with a lie in his mouth. Such statements are admitted, upon consideration that their declarations are made in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced and the mind induced by the most powerful consideration to speak the truth. It has always to be kept in mind that though a dying declaration is entitled great weight, yet it is worthwhile to note that as the maker of the statement is not subjected to cross-examination it is essential for the Court to insist that the dying declaration should be of such nature as to inspire full confidence of the Court in its correctness. The Court is obliged to rule out the possibility of the statement being the result of either tutoring, prompting or vindictive or a product of imagination. Before relying upon a dying declaration, the Court should be satisfied that the deceased was in a fit state of mind to make the statement. Once the Court is satisfied that the dying declaration was true, voluntary and not influenced by any

extraneous consideration, it can base its conviction without any further corroboration as a rule requiring corroboration is not a rule of law but only a rule of prudence.'

13. In the result, this appeal is partly allowed. Conviction and sentence of appellant Nos. 2 and 3 - Bulaki Bai and Chutkun Choudhary are set aside and they are acquitted of the charge under Section 302/34, IPC. Appellant No. 1 Bikai is convicted under Section 302 instead of Section 302/34, IPC and the sentence of life imprisonment awarded to him by the Trial Court is maintained. His appeal is dismissed.

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