

Manohar Vs. State and M.P.

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Court : Madhya Pradesh

Decided On : Jan-25-1999

Reported in : I(1999)DMC638

Judge : B.A. Khan and ;Shambhoo Singh, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Crl. Appeal No. 606 of 1994

Appellant : Manohar

Respondent : State and M.P.

Advocate for Def. : Desai, Adv.

Advocate for Pet/Ap. : G.S. Solanki, Adv.

Disposition : Appeal allowed

Judgement :

Shambhoo Singh, J.

1. This appeal has been preferred by the accused against the judgment and order dated 26.8.1994 passed by Additional Sessions Judge, Jaora, in S.T. No. 178/93 whereby he was convicted under Section 302 of the Indian Penal Code and sentenced to life imprisonment and fine of Rs. 5,000/-, in default of payment of

fine, two years further R.I.

2. The prosecution case, in brief, was that the deceased widow Anandibai was living in Iqbal Ganj, Jaora, in her parents house with her daughters Madhubala (PW

4) aged about 18 years and Leelawati. The deceased's cousin Goverdhanlal (PW

1) and his wife Geetabai (PW

2) were living in the adjacent house. The deceased Anandi Bai was having illicit connection with the appellant. He wanted to re-marry with her and always demanded money from her for liquor. On the date of incident i.e. 13.8.1993 the parents of the deceased had gone out and she was all alone in the house. The appellant came there at 4-5 p.m. and demanded money from her for purchasing liquor and insisted for marriage. On Anandibai's refusal, he poured kerosene oil on her and set her to fire and ran away from the back-door of the house. Hearing cry, Goverdhanlal and Geetabai came in her house and extinguished fire, at the same time Madhubala came from the back-door who saw the appellant running from the house. They took her to Civil Hospital, Jaora. An intimation was sent to police. The Head-Constable Nandlal came in the hospital. He recorded statement of the deceased and admitted her in the hospital. Dr. U.D. Katarkar (PW

3) recorded her dying-declaration at 5.50 p.m. Yuvraj Singh Chouhan (PW 6), S.H.O. City Jaora, recorded FIR Ex. P7 on the basis of the statement recorded by the Head-Constable Nandlal. On 14.8.1993 her condition became precarious and she was shifted to District Hospital, Ratlam where she succumbed to her injuries. Yuvraj Singh Chouhan seized plastic can with 100 ml. kerosene oil, one empty country-liquor bottle, pieces of bangles, a glass smelling liquor and kerosene oil vide seizure memo Ex. P1. He also prepared spot-map Ex P5. Her dead-body was sent for postmortem examination to District Hospital, Ratlam, where Dr. Deep Vyas (PW

5) conducted autopsy on the dead-body. He found burn injuries on all over her body. He found 88% of burn injuries. Dr. Vyas opined that the cause of death was

shock and septicaemia. The appellant was arrested. After completion of investigation, challan was filed. The appellant pleaded not guilty and false implication. The trial Judge convicted and sentenced him as stated above. Hence, this appeal.

3. Mr. G.S. Solanki, learned Counsel for the appellant, submitted that the learned trial Judge committed error in convicting the appellant on the basis of the statement of Madhubala, daughter of the deceased who was annoyed with appellant and dying-declaration recorded by Dr. U.D. Katarkar (PW 3). He further contended that the dying-declaration of the deceased was also recorded by Executive Magistrate and that was withheld by the prosecution, therefore, adverse inference that the dying-declaration did not support the prosecution case, should be drawn. On the other hand, Mr. Desai, learned Govt. Advocate, supported the impugned judgment.

4. We went through the evidence on record and considered the arguments advanced by Counsel for both sides. From the evidence of Goverdhanlal (PW 1), Geeta Bai (PW 2), Madhubala (PW 4) and Dr. U.D. Katarkar, it has been proved that the deceased Anandibai sustained burn injuries. Dr. Deep Vyas (PW 5) who performed post-mortem examination on the dead-body, stated that the deceased had 88% of burn injuries on her body and she died due to shock and septicaemia caused by burn injuries.

5. Now the question that arises for consideration is whether the appellant poured kerosene oil on Anandibai and put her on fire and thereby caused her death. There is no eye-witness account available on record. According to the prosecution, the appellant sprinkled kerosene oil on Anandibai and set her on fire and ran away. When she raised alarm her cousin Goverdhanlal (PW

1) and Geetabai (PW

2) came there, a little later Madhubala, her daughter also came there. She told these witnesses that the appellant had poured kerosene oil on her and put her on fire. But Goverdhanlal (PW

1) and Geetabai (PW

2) did not support the prosecution case. They did not state that the deceased Anandibai told them that the appellant had sprinkled kerosene oil on her and burnt her. The prosecution did not declare Goverdhanlal hostile and, therefore, there is no reason to disbelieve his statement. Both of these witnesses are near relations of the deceased. They had no enmity with the deceased or her parents and no friendship with the appellant. There appears no reasons why they should tell lie. It is true that Madhubala stated that when she came from outside from the back-door of her house, she saw the appellant running from there when she entered her house, she saw that her mother was burning and Goverdhanlal and Geetabai were extinguishing fire. Her mother told her that the appellant had burnt her. But the statement of Madhubala does not appear to be reliable as she admitted in cross-examination that the appellant was having illicit connection with her mother which she did not like and she was angry with the appellant. Her statement stands contradicted by the evidence of Goverdhanlal and Geetabai. The prosecution did not examine any person from the neighbourhood or other person before whom the deceased stated that she was burnt by the appellant.

6. The prosecution relies on the dying-declaration Ex. P3 recorded by Dr. U.D. Katarkar. It is settled law that conviction can be based on dying-declaration alone even without corroboration from other evidence, provided it is truthful and reliable and not vitiated in any other manner. A person at the verge of death is most unlikely to make false statement unless tutored or prompted by relatives. The Supreme Court in case of *Kusa v. State of Orissa*, AIR 1980 SC 559. observed :

'In fact the shadow of immediate death is the best guarantee of the truth of the statement made by a dying person regarding the causes or circumstances leading to his death which are absolutely fresh in his mind and is untainted or discoloured by any other consideration except speaking the truth. It is for these reasons that the statute (the Evidence Act) attaches a special sanctity to a dying-declaration. Thus, if the statement of a dying person passes the test of careful scrutiny applied by the Courts, it becomes a most reliable piece of evidence which does not require any corroboration. Suffice it to say that it is now well established by a long course

of decisions of the Supreme Court that although a dying-declaration should be carefully scrutinised but if after perusal of the same, the Court is satisfied that the dying declaration is true and is free from any effort to prompt the deceased to make a statement and is coherent and is consistent, there is no legal impediment in basing the conviction on such a dying declaration even if there is no corroboration.'

But the dying-declaration Ex. P3 suffers from serious infirmities. Dr. Katarkar admitted in cross-examination that when he recorded dying-declaration, Madhubala and Head-Constable Nandlal were present. As stated above, Madhubala was annoyed and angry with the appellant as he was having illicit connection with her mother. Therefore, she did not like his coming in her house. The Head-Constable Nandlal was investigating the offence. He recorded the statement of the deceased under Section 161 of the Criminal Procedure Code. Under such circumstances, the dying-declaration Ex. P3 loses its value and it cannot be relied on. Dr. Katarkar did not take the signature or thumb-impression of the deceased on the dying-declaration Ex. P3. He also did not get the signature of the witnesses thereon. The argument of Mr. Desai that the deceased was not in a position to put her thumb-impression on the dying-declaration, is not acceptable as the statement recorded by Head-Constable Nandlal under Section 161 of the Criminal Procedure Code contains clear thumb-impression of the deceased. Dr. Katarkar did not send Madhubala and Head-Constable Nandlal out of the room when he recorded her statement. There was every likelihood of tutoring and prompting the deceased by her daughter and the Investigating Officer to make statement against the appellant. Under such circumstances, Ex. P3 loses its value (See *Rajesh @ Raja s/o Shashibhushan Dass v. State of M.P.*, 1997 (1) MPLJ 1367. The other reason for disbelieving the prosecution story is that the prosecution concealed the best evidence. The Investigating Officer, S.H.O. Yuvraj Singh Chouhan (PW 6) stated in examination-in-chief itself that he called the Executive Magistrate, Naib Tehsildar Bhindwal in the . hospital for recording dying-declaration and Shri Bhindwal came to hospital and recorded the dying-declaration of the deceased but the prosecution withheld this document, therefore, adverse inference is drawn that the dying-declaration recorded by the Executive Magistrate was not supporting the prosecution case. As stated earlier, Yuvraj Singh Chouhan

stated that Head-Constable Nandlal had recorded the statement of Anandibai which could be used as dying-declaration but the prosecution did not examine Nandlal also and, thus, the statement recorded under Section 161 of the Criminal Procedure Code remained unproved.

7. As discussed above, the prosecution could not prove that the appellant caused the death of the deceased beyond reasonable doubt. It is true that the conduct of the appellant that he ran away from the house raises suspicion but suspicion, howsoever strong, cannot take place of proof. Mr. Solanki, LC for the appellant, argued that the deceased was pressing for marriage as her family members were objecting to appellant's coming to their house and the appellant was not agreeable for the marriage, therefore, the deceased herself sprinkled kerosene oil and put fire on her. The appellant being frightened ran away from the spot. Under such circumstances, on the basis of this conduct of the appellant, it cannot be inferred that he committed murder of the deceased. This argument cannot be said to be without substance.

8. In view of above, the appellant deserves benefit of doubt. The appeal is allowed and the impugned judgment and order is set aside. The appellant is acquitted of the offence under Section 302 of the Indian Penal code. His bail-bonds are discharged.