

Keshav Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Mar-04-1998

Reported in : I(1999)DMC243

Judge : A.K. Mathur, C.J. and ;S.K. Kulshrestha, J.

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

Appeal No. : Criminal Appeal No. 527 of 1991

Appellant : Keshav

Respondent : State of M.P.

Advocate for Def. : P.D. Gupta, Govt. Adv.

Advocate for Pet/Ap. : Ashok Lalwani, Adv.

Disposition : Appeal dismissed

Judgement :

A.K. Mathur, C.J.

1. This is an appeal directed against the judgment dated 1.2.1991 passed by the learned VIIth Additional Sessions Judge, Bhopal, in S.T. No. 119/89, whereby the learned Additional Sessions Judge has convicted the appellant under Section 302 of IPC for life imprisonment.

2. The brief facts giving rise to this appeal are that on 3.1.1989, the deceased Bharti was living with the accused in the House No. T-21 situated at Tajmahal, Bhopal. On the fateful day at about 5.30 p.m., it is alleged that the accused poured kerosene oil on his wife Bharti and ablazed his wife. As a result of this fire, the entire body of the deceased was burned. She was immediately taken to hospital and at about 8.45 p.m. Naib Tahsildar/Executive Magistrate K.L. Indani (PW 6) recorded the dying declaration of the deceased Bharti. On 3.1.1989 on the basis of the information given by the neighbour of the accused Murli, Ramdev Yadav, A.S.I. (PW 11) went to the Hamidia Hospital. It is alleged that on the basis of the dying declaration given by the deceased in the hospital, offence was registered under Section 307 of IPC. Thereafter, on 10.1.1989 the deceased died in the hospital, therefore, offence was converted from Section 307 to Section 302 of the IPC.

3. Dr. D.S. Badkur examined the dead body of the deceased. The accused denied the allegations and it is alleged that the deceased had, out of anger, made false statement against him. In defence, mother-in-law of the accused Heerabai (PW 1), neighbour Parmanand (PW 8), and Murlidhar (PW 9) were examined. The prosecution in support of its case examined as many as 17 witnesses. The learned Additional Sessions Judge after conclusion of trial, convicted the accused-appellant as aforesaid.

4. In the present case, the best evidence is that of dying declaration given by the deceased Ex. P/5, which was recorded by the Naib Tahsildar-cum-Executive Magistrate. The deceased in her dying-declaration (Ex. P/5) stated that on 3.1.1989 in the evening at 5.30 p.m., her husband quarrelled with her and administered beating. Thereafter, he poured kerosene oil on her and ablazed her. At that time, both children were at home.

5. PW 6-K.L. Indani, Naib Tahsildar, who recorded dying declaration (Ex. P/ 5) of the deceased, has deposed that on requisition received from the police, he rushed at the hospital and at 8.45 p.m. he recorded the dying declaration of the deceased and he proved his signature placed at 'A to A'. He has also proved the thumb impression of the deceased marked at B to B. He has deposed that at that time

when the dying declaration was recorded, she was in a fit state of mind to give the statement. He has also deposed that it took 5 minutes to record the statement. He has deposed that he has obtained a certificate from the doctor that she was in a fit condition to give her dying declaration and that endorsement was at 'D to D'.

6. The prosecution in addition to this, has examined the mother of the deceased Heerabai (PW 1). She has deposed that the accused used to beat her daughter. She has also deposed that she was informed at Bilaspur by the police, who had come from Bhopal, that her daughter has been burned and on the next day, she went to Bhopal and at that time, her daughter was in the hospital. She has deposed that when she met her daughter then her daughter told her that her husband poured kerosene oil and ablazed her. She was cross-examined and confronted with the police statement (Ex. D/1) in which she had not stated that her daughter had told her that the accused poured kerosene oil and ablazed her. Brother of the deceased Rajkumar (PW 2) was also examined, who had accompanied his mother to Bhopal and then immediately rushed to the hospital. There, he was informed by his sister Bharti that kerosene oil was poured on her and she was ablazed by her husband. He has deposed that when he met his sister, she had 90% burns. He has denied the suggestion that on account of the burn injuries, his sister was not in a position to give statement. PW 3-Bhupendra, son of the deceased, has turned hostile and has denied having given a statement before the police that his father poured kerosene oil and burned his mother. PW 8-Parmanand is a neighbour of the accused. He has deposed that often the accused used to beat his wife. The accused was not doing anything, but his deceased wife used to clean utensils and was earning her livelihood. He has deposed that the accused was drunkard. He has deposed that he is the President of Tajmahal Sindhi Panchayat. He has deposed that when he came to know that the deceased Bharti has been burned, he immediately rushed to Hamidia Hospital and there he saw that the Executive Magistrate Shri Indani was recording the dying declaration of the deceased. He has deposed that during recording of dying declaration, he was present and at that time, Doctor was also present. PW 9-Murlidhar is another neighbour of the accused. He has deposed that in the morning, the husband and wife quarrelled, but he sorted out the matter. PW 16- Smt. Santoshibai has deposed that at about 5 p.m. when she heard the cries of the deceased, she came

out from her house and saw that Bharti was burning. The whole body of the deceased was on fire and the accused was standing there and he did not make any attempt to extinguish the fire. She has deposed that she abused the accused and poured water on Bharti, but she could not succeed in extinguishing fire. She thereafter asked the accused to do something to extinguish the fire and he went inside the house and brought a quilt. Thereafter, she with the help of the accused covered the deceased with that quilt and extinguished the fire and deceased was taken to hospital.

8. The learned Additional Sessions Judge, after reviewing the aforesaid evidence, has convicted the accused-appellant as aforesaid. After going through the aforesaid evidence, we are satisfied that prosecution story has a ring of truth. The learned Counsel for the appellant has strenuously urged before us that the dying declaration is unreliable as the Doctor who has given the certificate, has not been produced by prosecution in evidence, therefore, it is not known whether deceased was in a fit condition to give dying declaration or not. It is true that the Doctor has not been produced, but the Executive Magistrate has stated in his statement that an endorsement at place 'D to D' was given by the Doctor and that the deceased was in a fit condition to give statement and she was conscious. The Executive Magistrate has also deposed that she was conscious and in a fit condition to give statement. Likewise, PW 8-Parmanand, who was present at the time when the dying declaration was recorded by the Executive Magistrate, has deposed that the deceased was in a position to give statement and the dying declaration was recorded in his presence by the Executive Magistrate and at that time, Doctor was also present. Therefore, the statement of Executive Magistrate Shri Indani is sufficiently corroborated by the statement of Parmanand (PW 8). When, there is direct evidence to show that the deceased was in a fit condition to give a statement and it was recorded in the presence of the Doctor and the same has been supported by another independent witness Parmanand (PW 8), there is no reason to doubt this dying declaration.

9. Learned Counsel for the appellant has invited our attention to the decision of the Hon'ble Supreme Court given in the case of State of Assam v. Mafizuddin Ahmed, AIR 1983 SC 274. In that case, their lordships have taken a view that if the dying

declaration is truthful then it can be acted upon and it is not necessary to seek any corroboration and the conviction can be upheld on that basis. But in that case, their lordships found that the deceased was alive for 8 days after receiving burn injuries and did not disclose earlier to anyone who met in the hospital that her husband, the accused sprinkled kerosene oil and set her on fire. Therefore, in that case, the High Court acquitted the accused and the same was upheld by their lordships of the Hon'ble Supreme Court; therefore, this case does not help the learned Counsel for the appellant in any manner. The learned Counsel for the appellant has also invited our attention to the decision of Hon'ble Supreme Court given in the case of Surender Kumar v. State (Delhi Admn.), AIR 1987 SC 692, and in that case, the conviction of the accused was upheld by their lordships in the case of bride burning and their lordships acted upon the dying declaration and found that the dying declaration was truthful. Likewise, in the case of Paniben v. State of Gujarat, AIR1992 SC 1817=I (1992) CCR 1100 (SC), it was a case of dying declaration of the deceased and their lordships after examining the dying declaration, found it to be truthful and accordingly, affirmed the conviction. As mentioned above, we are satisfied that the dying declaration given by the deceased was truthful and it is also sufficiently corroborated by the circumstances, therefore, there is no difficulty in acting upon this dying declaration for upholding the conviction of the appellant. Hence, there is no merit in this appeal and the same is dismissed.