

Rajaram Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jun-28-1996

Reported in : II(1996)DMC488

Judge : R.D. Shukla and ;Shambhoo Singh, JJ.

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

Appeal No. : Crl. A. No. 78 of 1991

Appellant : Rajaram

Respondent : State of M.P.

Advocate for Def. : G.A.

Advocate for Pet/Ap. : Jai Singh, Adv.

Disposition : Appeal dismissed

Judgement :

R.D. Shukla, J.

1. This judgment shall dispose of Criminal Appeal No. 147/ 91 also as both the appeals arise out of the same judgment and filed by the same accused-appellant.

Both these appeals directed against the judgment and order dated 31.1.1991 of 1st Additional Sessions Judge, West Nimar, Mandleshwar, passed in S.T. No. 130/90, whereby the accused-appellant has been convicted under Section 302, IPC for having committed murder of his wife Nanibai by setting her to fire and sentenced to imprisonment for life.

2. Prosecution story, in brief, is that the accused-appellant was living along- with his wife Nanibai, but he has suspicion about the fidelity and character of Nanibai. On the date of incident there was some altercation between them. Thereafter, accused poured kerosene oil and set her to fire. Nanibai, thereafter, was taken to hospital. Dr. M.L. Kag (P.W.7) treated, her and informed police, thereby, F.I.R. (Ex.P/9) was recorded. A request for recording statement was made, as such, Dr. Kag recorded dying declaration (Ex.P/2). Police Officer Mahindra Singh Kushwah received information regarding burn case vide (Ex.P/ 6). He, thereafter, reached the hospital, made request for dying declaration vide letter Ex.7.

3. Shri Kushwah visited spot, prepared site map Ex.P/4 and obtained medical certificate Ex.P/8. During inspection of the spot Shri Kushwah found plastic cane, match box one quilt. He seized these articles vide Ex.P/5. During investigation witnesses were questioned and their statements were recorded. The Police Officer, after enquiry, registered the offence vide Ex.P/9 and arrested the accused vide Ex. P/10. After investigation accused was prosecuted. He pleaded not guilty and false implication.

The learned trial Judge, after trial, has convicted and sentenced the accused-appellant as above. Hence, this appeal.

4. The contention of the learned Counsel for the appellant is that the dying declaration is unreliable; that the police never tried to get the dying declaration recorded by a Magistrate; Medical Officer appears to be an interested person. He has shown undue haste and anxiety in recording dying declaration. The second contention of the learned Counsel for the appellant is that the case is of 80 to 90% burn and, therefore, the patient was not in a position to make statement.

As against it, learned Counsel for the State has supported the case of the prosecution and submitted that the doctor has certified about the condition of the injured Nanibai. She was in a fit condition to make statement, thereafter, her statement was recorded. Dying declaration further stands corroborated from the statement of other witnesses also.

5. There is no dispute as to the death of Nanibai by burn injuries. Dr. Kag initially examined Nanibai and found following injuries :

(i) Superficial burns over the whole face and singing of the hair of scalp. Skin of the cheek peeled off.

(ii) Superficial burns over the whole neck and skin of the front of neck peeled off.

(iii) Superficial burns of the chest and whole abdomen, both hands and skin peeled off.

(iv) Superficial burns over the both gleated region and skin peeled off.

(v) Superficial burns over the privatepart and skin of left side peeled off.

(vi) Superficial burns of the legs and skin of left leg peeled off.

6. As the skin has come out because of burn injuries, learned Counsel for the defence submitted that in such condition it is highly impossible to take thumb impression. We do not agree with this contention of the learned Counsel as despite such burn injuries and partial peeling off skin thumb impression can be taken. The matter will be further discussed while appreciating the evidence on dying declaration. It has no where been stated that there was no skin over under side of the thumb.

7. Dr. M.L. Kag has very clearly stated that Nanibai was admitted in the hospital, he recorded her statement at 11.30 p.m. He has also stated that two other independent witnesses were also present. P.W.3 Champalal has also corroborated the story and stated that doctor on duty had recorded the statement of a lady who was admitted in the hospital for burn injuries and the lady has very clearly stated that her husband has set her to fire. This witness has admitted his

signature on dying declaration (Ex.P/2) recorded by Dr. Kag. Learned Counsel for the defence has challenged the veracity of statement of Champalal mainly on the ground that according to this witness the Statement was recorded at about 8- 9 p.m. while as per record, dying declaration was recorded between 11.30 to 11.40 p.m. Champalal is a rustic witness and, therefore, complete accuracy in the matter of timing cannot be expected from him. Such witness generally gives time on the basis of conjecture and surmises. Dr. Kag has very clearly mentioned the time in the document Ex.P/2 as 11.30 p.m. He further noted that the recording of statement closed at 11.40 p.m. There is nothing to disbelieve this aspect of the version given by Dr. Kag. Dr. Kag. has no axe to grind against the accused and, therefore, there is nothing to disbelieve Dr. Kag. In our considered opinion, therefore, it has been rightly accepted by the learned trial Judge that Dr. Kag recorded the statement Ex.P/2 and the same was disclosed and stated by Nanibai, who was admitted because of serious burn injuries and died subsequently.

As observed in earlier paragraph, Dr. Kag stands corroborated from the statement of Champalal (P.W.3). Champalal has no axe to grind against the accused.

8. Other witnesses examined by the prosecution i.e., P.W.1 Somriya, P.W.2 Bagajia and P.W.4 Phoolchand have turned hostile and they did not support the case of the prosecution. P.W.2 Bagajia is the father of accused and P.W.4 Phoolchand is the brother of accused. Somriya is neighbour of accused Rajaram. On the date of incident he came alongwith Rajaram and, therefore, the possibility of his having been won over cannot be ruled out.

9. It is an established principle of law that the conviction can be based on a dying declaration if the same is truthful and reliable. There is nothing to show that Nanibai was tutored by any of her relation. The presence of other relations has neither been proved nor suggested. Dying declaration was recorded immediately, thus, there was no time left for tutoring. Thus, the statement made by Nanibai appears to be true and the same has rightly been relied on by the learned Trial Judge.

10. In view of the discussions above, we find no substance in appeal. The appeal is, therefore, dismissed. Accused-appellant is on bail. His bail bonds are

cancelled. He shall appear before the C.J.M. concerned, for serving out the remaining sentence.

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