

Phullibai Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : May-16-2001

Reported in : 2001(5)MPHT445; 2002(1)MPLJ301

Judge : C.K. Prasad and ;Usha Shukla, JJ.

Acts : [Evidence Act, 1872](#) - Sections 32(1); ;[Indian Penal Code \(IPC\), 1860](#) - Sections 302; ;Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 98/93

Appellant : Phullibai

Respondent : State of M.P.

Advocate for Def. : R.K. Verma, Panel Lawyer

Advocate for Pet/Ap. : Usha Dasgupta, Adv.

Disposition : Appeal dismissed

Judgement :

1. Sole appellant, being aggrieved by her conviction for offence under Section 302 of the Indian Penal Code and sentence of rigorous imprisonment for life passed by 1st Addl. Sessions Judge, Sidhi in Sessions Trial No. 44/89 by judgment dated 29-6-92, has preferred this appeal.

2. It is somewhat an unusual case. Here, the allegation against the appellant, who is wife of the deceased Udaibhan is that she poured kerosene oil on his body and set him on fire. According to the prosecution on 22-9-88 deceased Udaibhan was staying in his Sasural in village Semriha alongwith his wife appellant Phulli. Appellant Phulli, according to the prosecution, had illicit relations with her brother-in-law and appellant did not like his stay at Sasural. Prosecution story further is that on 22-9-88 appellant besides other accused persons (since acquitted) ran to assault Udaibhan and threatened him to leave the village. On the said date at 10 A.M. while Udaibhan was lying in his Sasural because he had fever, appellant poured kerosene oil and set him on fire. Sustaining the burn injury Udaibhan came out of the house and shouted for help at which witnesses came and extinguished the fire.

3. Udaibhan in burnt condition came to Police Station Majhouli and gave information from where he was sent to the hospital for treatment. P.W. 11 Dr. Ajay Pal Singh admitted Udaibhan in the hospital and recorded his dying declaration (Ex. P-14) at 12.05 in the night. While Udaibhan was undergoing treatment, he died on 2-10-88 and the information to the said effect was sent by P.W. 11 Dr. Ajay Pal Singh to the Officer in-charge of the Majhouli Police Station, on the basis of which Marg intimation (Ex. P-4) was recorded. Thereafter, police personnel came to the hospital and prepared the inquest memo in presence of the witnesses and the dead body was sent for postmortem examination, which was conducted by P.W. 11 Dr. Ajay Pal Singh. In his opinion cause of death of Udaibhan was extensive burn which had led to septicemia leading to Cardio respiratory failure.

4. Police after usual investigation submitted charge-sheet against the appellant and she was ultimately committed to the Court of Sessions to face the trial. Appellant denied to have committed any offence and her plea was that deceased Udaibhan committed suicide and she had been falsely implicated in the case. Prosecution in support of its case had altogether examined 11 witnesses. Two defence witnesses have also been examined.

5. The Trial Court on consideration of the evidence led before it held that death of Udaibhan was homicidal in nature and was caused by the appellant by pouring

kerosene oil and setting him on fire. It did not accept the defence of the appellant that Udaibhan committed suicide and the evidence of the two defence witnesses were not found to be worthy of reliance. For accepting the case of the prosecution, the trial Court mainly relied on the evidence of P.W. 11 Dr. Ajay Pal Singh and the dying declaration (Ex. P-14). It is relevant here to state that Dr. Ajay Pal Singh had not only treated Udaibhan but also conducted his postmortem examination and recorded the dying declaration.

6. Ms. Usha Dasgupta appears on behalf of the appellant whereas State is represented by Sri R.K. Verma, Panel Lawyer. Ms. Dasgupta contends that the finding recorded by the Trial Court the death of Udaibhan was homicidal in nature is erroneous. According to her, Udaibhan committed suicide which would be evident from the evidence of D.W. 1 Sheetla Prasad and D.W. 2 Manmohan.

7. Mr. R.K. Verma, however, submits that the evidence of D.W. 1 Sheetla Prasad and D.W. 2 Manmohan is not fit to be relied on and the dying declaration of Udaibhan does not suffer from any infirmity and that clearly shows that it was the appellant who had set him on fire which ultimately led to his death. According to Sri Verma the evidence brought on record clearly shows that the death of Udaibhan was not suicidal but homicidal.

8. Having appreciated the rival submission, we do not find any substance in the submission of Ms. Dasgupta. P.W. 11 Dr. Ajay Pal Singh, who had conducted the postmortem examination has clearly stated in his evidence that the cause of death of Udaibhan was extensive burn which resulted into septicemia and ultimately same led to Cardio respiratory failure. It is worth mentioning here that P.W. 11 Dr. Ajay Pal Singh was cross-examined by the appellant and looking to the parts of the body burnt, he opined that deceased had not set himself on fire and that his death was not suicidal but homicidal.

9. D.W. 1 Sheetla Prasad and D.W. 2 Manmohan had although stated in their evidence that Udaibhan committed suicide but D.W. 1 Sheetla Prasad had clearly stated in his cross-examination that his house is situated at a distance of one furlong and hence, possibility of his seeing Udaibhan committing suicide from such a distance does not seem feasible. As stated earlier D.W. 2 Manmohan had

although stated in his evidence that Udaibhan committed suicide but in his cross-examination he had clearly admitted that he did not see him while he was setting himself on fire but saw him while he was already burnt. In view of the aforesaid infirmities, no reliance can be placed on the evidence of D.W. 1 Sheetla Prasad and D.W. 2 Manmohan. Appellant in her examination under Section 313 of the Code of Criminal Procedure had also not stated so. P.W. 11 Dr. Ajay Pal Singh has clearly opined that the death of Udaibhan was homicidal in nature. We do not have any reason to doubt his evidence and, in agreement with the Trial Court, we hold that the death of Udaibhan was homicidal in nature.

10. As stated earlier the Trial Court had held the appellant guilty of the offence mainly relying on the dying declaration. The dying declaration is a statement by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death and it is relevant under Section 32(1) of the Evidence Act, in a case, in which cause of death of that person's death is in question. It is an exception to the general rule of exclusion of hearsay evidence and the statement made by a person, written or verbal, of relevant fact after his death, is admissible in the evidence if it refers to the cause of his death or any circumstances of the transaction which resulted in his death. It is true that a dying declaration is not a deposition in a Court of law and it is neither made on oath, nor in the presence of the accused and hence, not tested by cross examination on behalf of the accused. 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 praesumuntur mentiri*. Dying declaration is admitted in evidence by way of an exception to the general rule against the admissibility of hearsay evidence on the principle of necessity. In the present case deceased Udaibhan, in the statement, made before P.W. 11 Dr. Ajay Pal Singh has stated the cause and the circumstances which had resulted in his death and in that view of the matter we do not find any doubt as regards admissibility of the dying declaration (Ex. P-14). In fairness to Ms. Dasgupta, we must state that she had not questioned its admissibility in evidence.

11. Ms. Dasgupta submits that the dying declaration suffers from inherent infirmity and as such same is fit to be discarded. She points out that in the dying declaration (Ex. P-14) Udaibhan had stated that it was the appellant who had set him on fire because she had illicit relationship with his co-brother but in his deposition, while answering question No. 6 as to why his wife set him on fire, he had stated something else. In the dying declaration (Ex. P-14) the question put to him was as follows :

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mkj% gekjh vkSjr lkChandra Narain Yadav v. Shibjee Yadav and Ors., (1999) 6 S.C.C. 63) 'it is too well settled that a dying declaration, if found to be true and voluntary, can form the sole basis of conviction even without any corroboration.'

16. It is worth mentioning here that other witnesses, who were examined to support the case of the prosecution that it was the appellant who had poured kerosene oil and set her husband on fire, have not supported the case of the prosecution during trial and they have been declared hostile. From the evidence on record, it has been proved beyond all reasonable doubt that deceased Udaibhan was living in his Sasural at village Semriha and witnesses to the incident were residents of the same village. Deceased Udaibhan was not resident of that village and he was living in his Sasural alongwith the appellant and as such witnesses deposing falsely to save the appellant and other accused persons cannot be ruled out.

17. From what has been stated above it is evident that the prosecution has been able to prove its case beyond all reasonable doubt and the Trial Court rightly held the appellant guilty of the offence.

18. In the result, we do not find any merit in the appeal. It is dismissed accordingly.