

Ramesh Ahirwar. Vs. the State of Madhya Pradesh.

Ramesh Ahirwar. Vs. the State of Madhya Pradesh.

SooperKanoon Citation : sooperkanoon.com/915825

Court : Madhya Pradesh Jabalpur

Decided On : Mar-30-2011

Judge : Rakesh Saksena ; M.A.Siddiqui, JJ.

Acts : [The Indian Penal Code \(IPC\), 1860](#) - Sections 302, 498A, 307 ; Code of Criminal Procedure (CrPC) - Sections 161, 313, 91 ;

Appeal No. : CRIMINAL APPEAL NO. 1348/2001, And CRIMINAL APPEAL NO. 946/2002.

Appellant : Ramesh Ahirwar.

Respondent : The State of Madhya Pradesh.

Advocate for Def. : Shri B.P.Pandey, Adv.

Advocate for Pet/Ap. : Shri S.C.Datt, Adv.

Judgement :

1) Since both the above appeals arise out of the common impugned judgment, this judgment shall govern the disposal of both the appeals.

2) Appellant Ramesh Ahirwar has filed this appeal against the judgment dated 8th August, 2001, passed by Special Judge/Additional Sessions Judge, Sagar in Sessions Trial No. 187/2000, convicting him under Section 302 of the Indian Penal Code and sentencing him to imprisonment for life with fine of Rs. 1000/-, whereas State has challenged the same judgment for acquitting accused Smt. Ramdulari.

(Respondent Ramesh has wrongly been impleaded as respondent no.2.)

3) According to prosecution, about three years prior to the incident which took place on 25.2.2000, accused Ramesh Ahirwar was married to Suman (deceased). Accused Ramdulari happened to be the mother-in-law of deceased. It is alleged that after marriage accused persons subjected deceased to cruelty for not bringing sufficient dowry. On 25.2.2000, Suman was admitted by her husband Mahendra in District Hospital, Sagar in burnt condition. During the treatment, on 27.2.2000, a dying declaration Ex. P/14 was recorded by Additional Tehsildar Madhu Nahar (PW9), wherein it was disclosed by Suman that on 25.2.2000, her husband's younger brother Ramesh beat her and after pouring kerosene set fire to her. At that time, her mother-in-law i.e. accused Ramdulari had closed the doors. Her husband was not at home. Ramesh intimidated her that if she spoke against him, he shall defame her.

4) Duty Doctor Subhash Jain (PW4) examined the injuries of Suman and found 100% burns on her body. He gave pre M.L.C. report Ex. P/4. He also sent an intimation Ex. P/5 to Station Officer of Police Gopal Ganj. According to Dr. Subhash Jain (PW4), Suman told her that she got burnt while cooking.

5) On 28.2.2000, A.S.I. Satish Singh (PW11) went at the spot, prepared spot map Ex. P/17, seized half burnt clothes, plastic cane and a stove vide seizure memo Ex. P/10. On 10.3.2000, Inspector Bhagwan Singh (PW8) registered the case under Sections 498-A and 307 of the Indian Penal Code against the accused persons.

6) On 10.3.2000, during the treatment at District Hospital, Sagar at about 9.55 hours, Suman died. Merg intimation Ex. P/21 was recorded in Police Station, Cantt. and the case was converted to Section 302 of the Indian Penal Code. Investigating Officer Ashok Bhardwaj (PW14) conducted the inquest proceedings and sent the dead body of Suman for postmortem examination.

7) Postmortem examination was done by a panel of three doctors. According to Dr. G.P.Nema (PW7), there were 96% burns on the body. In his opinion, the cause of death was shock, produced by extensive burns and its complications. Burns

were anti mortem in nature. 8) Seized articles were sent to F.S.L. for chemical examination. As per F.S.L. report Ex. P/22 presence of kerosene was found on the burnt clothes and in the plastic cane. After completion of the investigation, charge sheet was filed and the case was thereafter, committed for trial. 9) Both the accused abjured their guilt and pleaded false implication. According to them, they were not present at the place of incident. They were working on brick kiln. They were called at the spot after the occurrence. Accused persons examined A.S.I. S.R.Vishwakarma (DW1) in their defence.

10) After trial and upon appreciation of evidence adduced in the case, learned Additional Sessions Judge acquitted both the accused persons of the charge under Section 498-A of the Indian Penal Code. Accused Ramesh was found guilty of committing murder of Suman and was convicted accordingly. However, finding the evidence insufficient against accused Smt. Ramdulari, she was acquitted. Aggrieved by the impugned judgment, accused Ramesh as well as the State, both have challenged the impugned judgment by filing their respective appeals.

11) We have heard the learned counsel of the parties and perused the impugned judgment and the evidence on record.

12) It is not disputed that deceased Suman died of burn injuries. Dr. Subhash Jain (PW4) deposed that on 25.2.2000, when he was posted as Medical Officer in District Hospital, Sagar, deceased Suman was brought by her husband Mahendra in burnt condition. He admitted her in Ward No. 5 and gave first aid treatment to her. He also sent an intimation letter Ex.P/5 to Gopal Ganj Police Post. According to him, general condition of Suman was precarious. Smell of kerosene was emanating from her body. Her body had 100% superficial burns. Suman informed her that she sustained burn injuries while cooking food. Burn injuries were dangerous to her life. Her injury report Ex. P/4 was signed by him. Sub Inspector Satish Singh (PW11) deposed that on receiving information from Tili Hospital Sagar about burning of Suman Bai, he went to hospital and issued a requisition form Ex. P/4 for her medical legal examination. On 10.3.2000, Suman died. Her inquest memo Ex. P/2 was prepared by Sub Inspector Ashok Bhardwaj (PW14) and the dead body was sent for postmortem examination. Dr. G.P.Nema (PW7)

performed the postmortem examination of the dead body. As per postmortem report, there were deep burns on body except on the right groin region. Both sloes, toes and 4 cm x 8 cm area near right shoulder was escaped. Rest of the body was burnt. Hair were singed. There was blackening and pus formation. Line of redness was present between burnt and healthy skin. Approximately, 96% body was burnt. Burns were anti mortem in nature. In his opinion, the cause of death of Suman was shock produced by extensive burns and its complications. Postmortem report Ex. P/12 was signed by him, Dr. R.D. Nanhoria and Dr. A.K.Saraf. Thus, it is evident that deceased had died of anti mortem burn injuries.

13) Learned senior counsel for the accused/appellant Ramesh, however, submitted that the trial Court gravely erred in placing implicit reliance on the evidence of dying declaration Ex. P/14 of the deceased recorded by Executive Magistrate and it failed to consider that in view of the dying declaration Ex. D/1 recorded by A.S.I. S.R.Vishwakarma (DW1), the dying declaration Ex. P/14 was doubtful and the accused was falsely implicated. Learned counsel for the State, on the other hand, justified and supported the conviction of accused Ramesh and at the same time, challenged the acquittal of accused Smt. Ramdulari on the ground that there was enough evidence to hold her guilty.

14) We have gone through the entire evidence on record. Dying declaration Ex. P/14 of the deceased has been recorded by Executive Magistrate Madhu Nahar (PW9). Madhu Nahar (PW9) categorically deposed in her evidence that on 27.2.2000, she was authorized by Tehsildar, Sagar for recording the dying declaration of Suman, wife of Mahendra, who was admitted in Tili Hospital, Sagar. She went to said hospital to record the dying declaration of Suman. After obtaining the certificate from doctor about the fitness of Suman for giving the dying declaration, she recorded her statement. According to Madhu Nahar (PW9), as per dying declaration made by Suman, her 'Dewar' Ramesh beat her in noon of 25.2.2000, her mother-in-law (Smt. Ramdulari) shouted on her and closed the doors, thereafter, Ramesh poured kerosene on her, tied her hands and set fire to her by match stick. Her husband had gone to Kiln. On questioning as to why she was burnt, Suman told that her 'Dewar' and mother-in-law used to harass her for not bringing dowry. Her mother-in-law did not permit her to go to her parents

house. She was married two years ago. Her `Dewar' told her that if she gave statement against him, he will defame her. Madhu Nahar (PW9) testified that since both the hands of Suman were badly burnt, she did not obtain her signature or thumb impression. She also made endorsement in the dying declaration in this regard. After recording the statement, she again obtained the certificate from the doctor. Madhu Nahar (PW9) testified that Suman gave all the answers to her questions. She was fully capable and competent to give the said statement. She found her mentally fit while recording the said statement. She sealed the dying declaration Ex. P/14 and sent it to Chief Judicial Magistrate, Sagar in envelope Ex. P/15. In cross examination, she stated that she did not permit any family members of the deceased to remain there while recording the statement. She denied that mother and sister of deceased were present at the time of recording the dying declaration. Learned counsel for the accused submitted that the doctor, who gave certificate about fitness of deceased for recording the dying declaration was not examined in the Court. It is true that prosecution did not produce the doctor, who certified the fitness of deceased, but from the evidence of Madhu Nahar (PW9), it is apparent that mental and physical condition of deceased was fit and she was capable of making the statement. If the executive Magistrate, who recorded the dying declaration was of the opinion that deceased was in senses and was in fit condition, merely on the ground that the doctor, who certified the fitness of the patient was not examined, the evidence of dying declaration cannot be rejected.

15) In *Laxman v. State of Maharashtra*-AIR 2002 SC 2973, Apex Court observed that "normally, the Court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where there is evidence that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor it can be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the Court ultimately hold the same to be voluntary and truthful."

16) It is also significant to note that deceased though sustained burn injuries on 25.2.2000, but remained alive till 10.3.2000. This fact finds support from the evidence of Dr. Subhash Jain (PW4), who examined the injuries of deceased on 25.2.2000 that deceased was conscious and was talking. Thus the evidence of Executive Magistrate Madhu Nahar (PW9) that deceased gave statement to her cannot be doubted. Madhu Nahar (PW9) is a Govt. servant. There was no reason for her to have recorded the statement of deceased falsely. There was not even suggestion that she entertained any grudge or animus against the accused persons for recording false statement. We are, therefore, of the opinion that the dying declaration Ex. P/14 recorded by Madhu Nahar (PW9) was a genuine document and was the correct account of the statement made by deceased to Madhu Nahar (PW9).

17) Learned counsel for the accused argued that there was another dying declaration recorded by Dr. Subhash Jain (PW4) when Suman was brought in burnt condition to hospital. According to Subhash Jain (PW4), during medical examination, Suman told to him that she got burnt while cooking. Though, Dr. Subhash Jain (PW4) did not record the statement of deceased Suman, but he recorded this fact in his medical report Ex. P/4. Learned counsel contended that the prosecution suppressed yet another dying declaration Ex. P/8, which was recorded by A.S.I. S.R.Vishwakarma (DW1). The dying declaration recorded by S.R.Vishwakarma (DW1) was inconsistent to the dying declaration recorded by the Executive Magistrate Madhu Nahar (PW9).

18) It appears that A.S.I. S.R.Vishwakarma (DW1) recorded dying declaration Ex. P/8 and that the said dying declaration was not produced by the prosecution in the Court. According to S.R.Vishwakarma (DW1), after recording the statement of deceased, he had sent the same to police station Cantt., but according to Sub Inspector Satish Singh (PW11) of Police Station Cantt., he never received the original document of dying declaration Ex. P/8 from A.S.I. S.R.Vishwakarma (DW1). Ex. P/8 is the photo copy of the dying declaration alleged to have been recorded by A.S.I. S.R.Vishwakarma (DW1). According to S.R.Vishwakarma (DW1), he was on duty in Tili Hospital on 25.2.2000 when Suman was brought there in burnt condition. When he received memo Ex. P/5 sent by the doctor, along

with the doctor and two witnesses, he went to record the statement of Suman. He asked the doctor to record the statement, but he refused, therefore, he recorded the statement of Suman. Doctor certified that Suman was fit to give statement. As per dying declaration Ex. P/8, while Suman was preparing tea on the stove, a 'Kuppi' of kerosene fell down, as a result of which, she caught fire. On her shouting, Ramesh and her mother-in-law reached there and poured water on her. Accused persons did not cause any trouble to her and they kept her happy. It was specifically recorded that she did not give false statement. This statement was signed by S.R.Vishwakarma, the doctor and two attesting witnesses. Dr. Subhash Jain (PW4) deposed that in the photo copy of the dying declaration Ex. P/8, he had given certificate about the fitness of Suman to make the statement. The said statement was recorded before him.

19) Since the original dying declaration Ex. P/8 was not produced by the prosecution, the defence filed an application under Section 91 of the Code of Criminal Procedure to adduce the secondary evidence. It is significant to note that the photo copy of the dying declaration Ex. P/8 was produced by the accused persons, whereas the original document was not produced by the prosecution. It can be presumed that this photo copy was supplied to accused persons by defence witness S.R.Vishwakarma (DW1), who recorded the said statement. Dr. Subhash Jain (PW4) deposed that had police asked him to record the statement, he would have recorded the same. This statement of Dr. Subhash Jain (PW4) militates against the evidence of S.R.Vishwakarma (DW1) that despite his request doctor did not record the statement and therefore, he recorded Ex. P/8. S.R.Vishwakarma (DW1) appears to have acted in haste. According to him, though he made a telephone call for sending any Executive Magistrate for recording the dying declaration, but no Gazetted Officer was available. When he asked the doctor to record the dying declaration, he said that he was busy with the treatment of patient. This fact was not recorded by S.R.Vishwakarma (DW1) in Ex. P/8. It is apparent that instead of getting the dying declaration recorded by the doctor or a Gazetted Officer, he himself proceeded for recording the dying declaration Ex. P/8 and made it's photo copy available to accused persons. Conduct of S.R.Vishwakarma betrays suspicion. According to Ex. P/8, 'Kuppi' of kerosene, which tumbled, was kept on the floor, as a result of which deceased

caught fire. It does not appear natural that on catching fire from the 'Kuppi', which was kept on floor deceased would have sustained 100% burn injuries. Another important fact is that according to the statement of deceased as recorded in Ex. P/8, on hearing the cries of deceased, accused persons reached there and tried to save her by pouring water on her, whereas according to statement of accused recorded under Section 313 of the Code of Criminal Procedure they were not present in the house; they were at their kiln. They reached at the place of occurrence when they were called by other persons. Apart from it, it sounds unnatural that deceased would say that she did not give false statement. It seems an addition by the person who recorded the statement. For the aforesaid reasons, it appears that A.S.I. S.R.Vishwakarma (DW1) recorded Ex. P/8 with a view to extend help accused persons.

20) According to Dr. Subhash Jain (PW4), deceased told to him that she got burnt while cooking food which he recorded in her pre M.L.C. Report Ex. P/4, whereas according to dying declaration Ex. P/8 recorded before him by S.R.Vishwakarma (DW1), deceased told that she got burnt while preparing tea on the stove and spreading of kerosene from the cane. This discrepancy militates against the truthfulness of the evidence of alleged dying declaration made by the deceased in M.L.C. Report Ex. P/4 and also Ex. P/8 recorded by S.R.Vishwakarma (DW1).

21) Mother of deceased viz. Beti Bai (PW5) deposed that accused persons used to harass deceased for giving less dowry. According to her, when she met Suman in the hospital at Sagar she disclosed to her that accused Ramesh assaulted her and after tying her hands poured kerosene and set fire to her. She, however, did not tell about the act of Smt. Ramdulari. She deposed that her in-laws, with folded hands requested deceased to save them and to say that she got burnt by stove while preparing tea. Investigating Officer Ashok Bhardwaj (PW14) also recorded the statement Ex. D/1 of deceased under Section 161 of the Code of Criminal Procedure. This statement, after the death of deceased is to be treated as a dying declaration. In this statement deceased reiterated the same story saying that Ramesh set fire to her. She stated that on hearing hue and cry and seeing smokes, when people of the village reached there, accused apologized for their mistake and allured her that they will save her by all means, even at the cost of

spending all their property and prayed that she should tell to police that she suffered burn injuries while preparing tea. Ramesh intimidated her that if she did not speak in that manner, he would defame her. In these circumstances, she did not tell police the truth. However, when they again started misbehaving, feeling that everything was all right, she disclosed the truth to Teshildar Madhu Nahar (PW9). In our opinion, in the circumstances as revealed from Ex. D/1 and the evidence of Beti Bai (PW5), the dying declaration Ex. P/8 alleged to have been recorded by A.S.I. S.R.Vishwakarma (DW1) did not inspire confidence and was rightly disbelieved by the trial Court.

22) Placing reliance on T.K. Reddy v. State of A.P.-JT 2002(6) SC 171, learned counsel for the accused submitted that the dying declaration recorded by police which was earlier in time should have been accepted. In our opinion, the facts of the instant case are different. From the evidence of Dr. Subhash Jain (PW4), it is revealed that deceased was brought to hospital by her husband Mahendra. At the time of recording the M.L.C. report Ex. P/4 and the dying declaration Ex. P/8, her husband must have been present in the hospital. Beti Bai (PW5), the mother of deceased had reached the hospital after recording of the said declaration. In these circumstances, the possibility that deceased was under the influence of accused persons cannot be ruled out. The conduct of the police officer S.R.Vishwakarma (DW1) also appeared to be suspicious. The original document of Ex. P/8 was not produced in the Court, but its photo copy was passed to accused. It was not established that the original document of Ex. P/8 was handed over to Investigating Officer. In these circumstances, in our opinion, no reliance could be placed on the dying declaration Ex. P/8 recorded by A.S.I. S.R.Vishwakarma (DW1).

23. In Varikuppal Srinivas v. State of A.P.-AIR 2009 SC 1487, Apex Court in paragraph 8 observed:

"8. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying

declaration should be of such nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence."

24) After bestowing our anxious consideration to the submissions made by learned counsel for the accused and the State and having gone through the record, we find that there is nothing on record to indicate that dying declaration Ex P/14 recorded by Executive Magistrate Madhu Nahar (PW9) was a false or manipulated document. We find the same to be truthful account of the incident given by deceased Suman. Needless to emphasize as also reiterated by the Apex Court in the case of Muthu Kutty and another v. State by Inspector of Police, T.N. Reported in (2005) 9 Supreme Court Cases page 113 and Satish Ambanna Bansode v. State of Maharashtra reported in AIR 2009 Supreme Court 1626 that the dying declaration can form the sole basis for conviction if it is found to be true and voluntary.

25. In view of the foregoing discussion, we are of the considered opinion that the trial Court did not err in relying upon the dying declaration Ex. P/14 of the deceased and rightly held the accused/appellant Ramesh guilty for intentionally causing death of Suman by pouring kerosene over her and setting her ablaze. At the same time, we find that the evidence adduced by the prosecution is insufficient to hold the respondent/accused Smt. Ramdulari guilty of the charge under Sections 302/34 and 498-A of the Indian Penal Code, therefore, the finding recorded by the trial Court in acquitting accused Smt. Ramdulari seems reasonable and probable. It does not call for any interference. Accordingly, it is affirmed. 26) We find no merit in the appeal of accused Ramesh. We uphold his conviction under Section 302 of the Indian Penal Code and the sentence of imprisonment for life with fine of Rs. 1,000/-.

27) Both the appeals fail and are hereby dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com