

HEERALAL

V.

STATE OF M.P.

Criminal Appeal No. 473 of 2009

MARCH 16, 2009

(DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY,
JJ.)

Penal Code, 1860:

Section 302 – Appellant convicted for murder of his wife – Upheld by High Court – On appeal, Held: In view of the discrepancies in the two dying declarations, one before the Doctor and another before the Naib Tehsildar, it is unsafe to convict the appellant – Conviction set aside – Evidence – Dying declaration.

The appeal against High Court upholding the conviction under s.302 IPC relates to two different dying declarations and the apparent discrepancies therein.

Allowing the appeal, the Court

HELD: The trial court and the High Court came to abrupt conclusions on the purported possibility that the relatives of the accused may have compelled the deceased to give a false dying declaration. No material was brought on record to justify such a conclusion. The evidence of the Nayab Tehsildar who recorded Exh.D4 was examined as PW8. His statement was clear to the effect that nobody else was present when he was recording the statement. That being so, in view of the apparent discrepancies in the two dying declarations it would be unsafe to convict the appellant.[Para 6] [285-H; 286-A-B]

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 473 of 2009

A From the Judgement and Order dated 05.03.2008 of the Hon'ble High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 114 of 1994.

S.S. Tewari, M.P. Singh, Vipin Gupta, for the Appellant.

B Vibha Datta Makhija, for the Respondent.

The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

1. Leave granted.

C 2. Challenge in this appeal is to the judgment of a Division Bench of the Madhya Pradesh High Court at Jabalpur upholding the conviction of the appellant for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC').

D 3. The background facts in a nutshell are as follows :

Prema Bai (hereinafter referred to as the 'deceased') died on 18.7.1992 in District Hospital, Chhatarpur. The appellant is the husband of the deceased.

E Relationship of the deceased was not cordial with the appellant because she was not beautiful. Beside that her brother-in-law attempted to commit rape on her and a Panchayat was convened by the deceased. The father-in-law and uncle-in-law of accused executed an agreement Exhibit (P-4) and assured that no such incident shall occur in future. Consequently, the deceased on 18-6-1992 came back to her husband house. On 19-6-1992, a quarrel took place between the appellant and the deceased. Consequently, the appellant sprinkled kerosene oil on the deceased and set her ablaze. On 20-6-1992, deceased was taken to Londhi hospital wherefrom she was referred to District Hospital, Chhatarpur, where she died on 18-7-1992. FIR was lodged. The dying declaration of deceased was recorded, investigation was triggered off and after completion of investigation, the appellant was charge sheeted.

H The case was committed to the court of Sessions for trial.

The appellant abjured the guilt and pleaded innocence. His defence is that he brought the deceased in burnt condition to the hospital, along with his parents and uncle for treatment. He was apprehended by the police at the hospital. The deceased got burnt during cooking meals, Hemwati Bai came to her working place and informed regarding the incident. The witnesses are lying to take revenge of previous grudge.

The prosecution examined seven witnesses while the accused appellant examined eight witnesses in defence. After hearing the parties and on consideration of the evidence and material on record, the trial court convicted the appellant for offence punishable under Section 302 IPC as noted above. Aggrieved by the judgment of conviction and sentence, an appeal was filed before the High Court where the primary stand was that there was a lot of difference in the statements made. There are two dying declarations (Exh.D4 and Exh.D3). Therefore the trial court was not justified in holding the appellant guilty. The stand of the State on the other hand before the High Court was that the first Dying Declaration (Exh.D4) was a result of pressure and therefore the same has been rightly discarded. The High Court upheld the contention of the State and dismissed the appeal.

4. The stand taken before the High Court was reiterated.

5. Undisputedly, in the first dying declaration recorded by a Nayab Tehsildar, it has been clearly stated that she tried to set herself ablaze by pouring kerosene on herself, but in the subsequent declaration, recorded by the another Nayab Tehsildar, a contrary statement was made. It appears that one dying declaration earlier was made before the Doctor. The trial court referred to the evidence of Dr. Chaturvedi who stated that the deceased was admitted on bed No.8, but the father of the deceased stated that her daughter was admitted on some other bed number.

6. The trial court and the High Court came to abrupt conclusions on the purported possibility that the relatives of the

A accused may have compelled the deceased to give a false dying declaration. No material was brought on record to justify such a conclusion. The evidence of the Nayab Tehsildar who recorded Exh.D4 was examined as PW8. His statement was clear to the effect that nobody else was present when he was recording the statement. That being so, in view of the apparent discrepancies in the two dying declarations it would be unsafe to convict the appellant.

7. The conviction is set aside. The appeal is allowed. Let the appellant be released from custody forthwith unless he is required to be in custody in connection with any other case.

G.N.

Appeal allowed.