

HIGH COURT OF CHHATTISGARH : BILASPUR

---

Division Bench : Hon'ble Shri Yatindra Singh, CJ &  
Hon'ble Shri Prashant Kumar Mishra, J.

---

Criminal Appeal No.678 of 1998

APPELLANTS

Ruswa alias Hari Singh & Another

Versus

RESPONDENT

The State of Madhya Pradesh (now State  
of Chhattisgarh)

---

Present :- Shri Vinay Dubey, Advocate for the appellants.  
Shri D.K. Gwalre, Govt. Advocate for the State.

---

ORAL JUDGMENT

(Passed on this 6<sup>th</sup> day of February, 2014)

1. At the very outset, learned counsel appearing for the parties would submit that the appellant No.2-Bhagwat alias Pusau has died during pendency of this appeal.
2. Consequently, the appeal in respect of appellant No.2-Bhagwat alias Pusau is dismissed as abated.
3. This appeal is directed against the judgment of conviction and sentence dated 6-3-1998 passed by the 7<sup>th</sup> Additional Sessions Judge, Bilaspur, in ST No.472/97, whereby the learned 7<sup>th</sup> Additional Sessions Judge has convicted & sentenced the appellants under Section 302 & 302 read with Section 34 of the Indian Penal Code (for short 'the IPC') and sentenced them to undergo imprisonment for life on both counts.
4. Appellant No.1 Ruswa alias Hari Singh was married with deceased Meena Bai in *chudi* form one year prior to the date of incident. She suffered extensive burn injuries up to 95% on 30-9-1997 at about 5.00 am. She was taken to the Police Station and Masturi hospital and from there she was taken to Bilaspur, however, she succumbed to the burn

injuries and died in the mid way to Bilaspur.

5. First Information Report (FIR) (Ex.P/13) was lodged by the deceased herself on 30-9-1997 at about 8.30 am i.e. within 3½ hours of the incident. She has stated in the FIR that she was married with the appellant No.1 Ruswa alias Hari Singh in *chudi* form one year prior to the date of incident, but has no issues out of the wedlock. When she woke up at 5.00 am and was in the process of keeping the bed sheet, etc. in its place, her father-in-law namely; Bhagwat caught hold of her, mother-in-law namely; Jamuna Bai poured kerosene oil on her body and her husband namely; Ruswa alias Hari Singh ignited the matchstick and put her on fire. Neighbours came to the house on hearing the alarm raised by her and they have been informed about the incident. Meena Bai has further stated that her father also came and he has also been informed about the incident. According to the deceased, the husband and her in-laws were pressuring her to obtain landed property from her parents and when she refused to do so she has been set ablaze.
6. In course of investigation, the prosecution recovered one sale deed in the name of Gayatri Thakur (PW-3), sister of the deceased vide Ex.P/1. Naksha panchayatnama of dead body was prepared vide Ex.P/3. In this document itself, which was prepared on the date of incident, it is clearly mentioned that, as per the statement made by the deceased to witnesses, her father-in-law, mother-in-law and husband set her ablaze after pouring kerosene oil. Burnt clothes, soil smelling kerosene oil, one bottle with few drops of kerosene, empty match box, another bottle containing 5-6 drops of kerosene were seized on 30-9-1997 vide Ex.P/4. Medical report was submitted by Dr. M.K. Rai (PW-6) vide Ex.P-14/Ex.P-5 (both contained in one document). The Investigating Officer requested the Medical Officer for recording dying declaration of

the deceased vide Ex.P/6 wherein Dr. M.K. Rai noted at 9.15 am that the deceased is unconscious & in gasping condition and she is referred to District Hospital, Bilaspur, for further treatment. Towel belonging to Ruswa alias Hari Singh was seized from him vide Ex.P/8. Inquest of handing the dead body has been proved Ex.P/9. Merg intimations are Ex.P/10 & Ex.P/11. Ruswa alias Hari Singh was sent for medical examination vide Ex.P/11 and his medical report has been proved as Ex.P/12, both contained in one document. Site map was prepared vide Ex.P/15. Requisition for postmortem is Ex.P/18 whereas the postmortem report is Ex.P/19. The prosecution recorded the case diary statements of the witnesses and thereafter, charge sheet was filed.

7. On committal of the case to the Sessions Court, charges under Section 302 and Section 302 read with Section 34 of the IPC were framed against the accused persons and at the end of trial, the appellants have been convicted, as mentioned above.
8. Shri Vinay Dubey, learned counsel appearing for the appellants would submit that the FIR has been treated as dying declaration, however, having suffered extensive burn injuries including the fingers, she was not in a position to append thumb impression, therefore, the contents of the FIR are unbelievable and not admissible as dying declaration. Learned counsel would further submit that there are serious contradictions, omissions and defects in the investigation and statements of witnesses, which proves that the appellants are not guilty and the appellants have been framed at the instance of the parents of the deceased. Learned counsel would specifically point out the following features/defects :

- Proper site map has not been prepared.
- Kartar Singh Thakur (PW-4), brother-in-law of the

deceased had gone to the police station, but did not lodge the FIR and surprisingly he came back to village to arrange a jeep for bringing the deceased to police station.

- There were burn injuries up to 95% on the body of the deceased and, as such, the deceased was not in a position to put her thumb impression on the dying declaration/FIR.
- The thumb impressions of the deceased on FIR (Ex.P/13) and its copy sent to the Magistrate vide Ex.P/17 appear to be different.

9. On the other hand, Shri Gwalre, learned Govt. Advocate appearing for the State supported the impugned judgment.
10. We have heard learned counsel appearing for the parties and perused the record.
11. There is no dispute that the deceased was married with Ruswa alias Hari Singh in *chudi* form and was residing with him, as his married wife. The deceased was in cultivating possession of ½ acre land, which was purchased in the name of Gayatri Thakur (PW-3). The appellants were pressuring the deceased to handover the said land to them. It is also not in dispute that the deceased died because of extensive burn injuries up to 95%. There is no separate dying declaration of the deceased, however, FIR has been lodged by the deceased herself.
12. In *State of Punjab v. Amarjit Singh*<sup>1</sup>, the Supreme Court has held that the practice of Investigating Officer himself recording a dying declaration during the course of investigation ought not to be encouraged and it would be better to have dying declaration recorded by Magistrate. But no hard and fast rule can be laid down in this regard. It all depends upon the facts and circumstances of each case.

---

<sup>1</sup> 1988 (Supp) SCC 704

13. In *Munnu Raja and Another v. The State of Madhya Pradesh*<sup>2</sup>, the Supreme Court has held thus :

“9. In regard to the second dying declaration, Ex.P-14, the main objection of the learned counsel is that it was made to the investigating officer himself and ought therefore be treated as suspect. In support of this submission, reliance was placed on a Judgment of this Court in *Balak Ram v. State of U.P.* The error of this argument consists in the assumption that the dying declaration was made to an investigating officer. The statement, Ex. P.14, was made by Bahadur Singh at the police station by way of a first information report. It is after the information was recorded, and indeed because of its that the investigation commenced and therefore it is wrong to say that the statement was made to an investigating officer. The Station House officer who recorded the statement did not possess the capacity of an investigating officer at the time when he recorded the statement. The judgment on which the counsel relies has therefore no application.”

14. To decide as to whether in the case in hand FIR can be treated as dying declaration, this Court would refer to the evidence available on record. Vindyachal Singh (PW-11), ASI of Police Station Masturi has proved the contents of the FIR (Ex.P/13). He has also proved that copy of FIR was sent to the nearest Magistrate on 30-9-1997 itself and the thumb impressions of the deceased were obtained in both the copies. In para 13 of his cross-examination, he has clearly stated that the deceased was fit to record her statement and the statement of the deceased has been reduced in writing in the FIR. He has specifically denied that the thumb impression of the deceased in Ex.P/13 and copy sent to the Magistrate vide Ex.P/17 are different.
15. Gulab Singh (PW-1) is the father of the deceased. According to him, the house of the accused persons is at a distance of 100-150 ft. from his house. This witness heard the alarm coming out from the house of the

---

<sup>2</sup> (1976) 3 SCC 104

deceased in the early morning, before sunrise, on the date of incident. He could recognize that it was his daughter's voice, therefore, his wife i.e. the mother of the deceased immediately went to the house of the deceased and came back after 15 minutes to inform him that the accused persons have set ablaze the deceased, which has been told to her by the deceased herself. Gulab Singh (PW-1) further stated that he did not enter the house of the deceased, but when the deceased was placed in a bullock cart for taking her to Masturi she stated to him that the accused persons have set her ablaze.

16. Chandrika Bai (PW-2) is the mother of the deceased. She has also stated that hearing the alarm raised by the deceased she rushed to the house of the accused persons and witnessed that her daughter has suffered burn injuries. When she enquired from her daughter as to why she has taken this step, the deceased stated that her in-laws caught hold of her and her husband set her ablaze. She came to her house because the deceased insisted that she should not stay in the house of the accused persons, however, her two other daughters Lata & Gayatri stayed in the house of the accused persons.
17. Gayatri Bai (PW-3) is the sister of the deceased in whose name the deceased had purchased  $\frac{1}{2}$  acre land, which was demanded by the accused persons. At the time of incident, this witness had gone to her parental house in the same village where the death has taken place. She has fully supported the statements made by her parents. Oral dying declaration was made by the deceased in front of this witness also.
18. Kartar Singh Thakur (PW-4) is the brother-in-law of the deceased. He has also stated that when he went to the house of the accused persons the deceased stated that she has been set ablaze by the accused persons, however, Gulab (PW-1) has stated that this witness was not

present at the place of occurrence, therefore, this Court would not take into account the statement of Kartar Singh Thakur (PW-4) while deciding as to whether the prosecution has proved its case.

19. Although there are some discrepancies/minor contradictions in the case diary statements and the Court statements of the above named witnesses, however, on perusal of the case diary statements (Ex.D/1 to Ex.D/4), it would clearly appear that the theme of the statement is the same wherein appellants have been implicated from the very beginning. The case diary statements were recorded on the date of incident itself.
20. In *Thoti Manohar v. State of Andhra Pradesh*<sup>3</sup> and *Kuriya and Another v. State of Rajasthan*<sup>4</sup>, the Supreme Court has held that minor discrepancies or improvements which do not affect the case of prosecution and are insignificant cannot be made basis for doubting the case of prosecution and they have to be ignored.
21. Thus, appreciating the evidence and giving effect to the same in its totality, it would clearly appear that the prosecution has fully established its case beyond all reasonable doubts. The appellants have rightly been held guilty for committing offence punishable under Section 302 and Section 302 read with Section 34 of the IPC.
22. As a sequel, the appeal fails and is hereby dismissed. The appellants are on bail. Their bail bonds are cancelled and they are directed to surrender before the trial Court forthwith to serve out the remaining period of sentence imposed upon them.

**CHIEF JUSTICE**

**JUDGE**

Gowri

---

<sup>3</sup> (2012) 7 SCC 723

<sup>4</sup> (2012) 10 SCC 433