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CRA-1944-2021

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

&

HON'BLE SMT. JUSTICE ANURADHA SHUKLA

ON THE 3rd OF SEPTEMBER, 2026CRIMINAL APPEAL No. 1944 of 2021*ROOPSINGH**Versus**THE STATE OF MADHYA PRADESH*

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Appearance:

*Shri Atul Gupta - Advocate for the appellant.**Shri B.K. Tyagi - Govt. Advocate for the respondent/State.*
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JUDGMENT

Per. Justice Anuradha Shukla

In this criminal appeal, the judgment passed by Fourth Additional Sessions Judge Dabra, District Gwalior on 16.02.2021 in S.T. No.89/2018 is assailed, whereby the appellant was convicted for the offence of Section 302 IPC for committing murder of his wife and was sentenced to life imprisonment and fine amount of Rs.3,000/- with default stipulations.

2. The facts not in dispute are that deceased Gomti Bai was the wife of appellant and she was taken to Jaya Arogya Hospital Surgery Department on sustaining almost 100% burn injuries on 02.11.2017. It is also not in dispute that appellant, too, was simultaneously admitted in that department with 30-35% burn injuries.

3. The facts of the case in brief are that in the night of 02.11.2017 Gomti Bai cooked only *Rotis* for the dinner and this infuriated the appellant;



he picked up a quarrel with his wife for not cooking any vegetables along with *Roti* and threatened to kill her; he set her ablaze after pouring kerosene on her. Gomti Bai was taken to the hospital where her dying declaration was recorded. Even the appellant was taken to the hospital with burn injuries and his dying declaration was also recorded. In the course of treatment, Gomti Bai passed away on 09.11.2017, therefore, a merg enquiry was registered and statements of witnesses were recorded. Completion of enquiry culminated into FIR registered on 13.05.2018 against the appellant at Crime No.37/2018. The matter was investigated and charge sheet was filed. The trial followed and upon its conclusion, appellant was convicted and sentenced as aforesaid.

4. Appeal has been preferred on the grounds that the trial court failed to appreciate the evidence in correct perspective; the prosecution evidence suffered material contradictions and improvements and still it was believed; the case was not proved beyond reasonable doubts and simply on the basis of the dying declaration of the deceased, the appellant was held guilty. It is submitted that the trial Court completely ignored the fact that deceased was not in a fit state of health to give rational and reliable dying declaration. Claiming the impugned judgment as perverse to the facts available on record, a request has been made to allow the appeal.

5. *Per contra*, State has opposed the appeal, claiming that the victim had given a highly consistent description of the incident in her dying declaration and there is no good reason to disbelieve its genuineness or veracity. A request is accordingly made to dismiss the appeal.

6. We have heard the learned counsel for the parties and have



examined the record thoroughly.

7. Prosecution has examined in all 16 witnesses and 7 of them are the close relatives of deceased; they are namely her mother Smt. Sheela (P.W.1), her sister Bhuri Bai (P.W.2), her brother-in-law Kalyan (P.W.3), her sister-in-law (*nanad*) Varsha (P.W.4), her brothers Ramhet (P.W.5) and Babbu (P.W.6) and her son Shekhar (P.W.11). They were all declared hostile by the prosecution as they failed to corroborate the prosecution story even to the slightest degree.

8. The testimony of Babbu (P.W.6), the brother of deceased, is very crucial to test the truth of the dying declaration of victim Gomti Bai, marked as Ex.P/21, in which she had admitted the presence of her brother, in her house at the time of incident and it was further stated that she was brought to hospital only by her brother Babbu. Despite being claimed as an eye-witness to the incident, Babbu (P.W.6) has flatly failed to lend any support to the prosecution case.

9. It has already been mentioned earlier as an undisputed fact that appellant Roop Singh was also taken to the hospital along with his wife Gomti and the person who brought him to the hospital was Ramhet, the other brother of victim Gomti. Ramhet (P.W.5) has stated before the trial Court that Gomti was cooking food and, during this course, her *sari* caught fire. He has further stated that appellant Roop Singh sustained burn injuries when he tried to save his wife Gomti. Ex.P/20 is the document of admission of appellant in the Surgery Department of Jaya Arogya Hospital, which confirms that appellant had sustained 30-35% burn injuries in the incident.



10. On the next day to the incident i.e. on 03.11.2017, Naib Tahsildar Kuldeep Dubey (P.W.14) recorded the dying declaration of Gomti Bai as well as of the present appellant. They both admitted in their dying declaration that they got engaged in a dispute prior to the incident regarding the items prepared by Gomti Bai in dinner. According to the dying declaration of Gomti Bai she was set on fire by appellant, while in the dying declaration of appellant, marked as Ex.P/22, he has deposed that following a dispute over not cooking any vegetable in the dinner, Gomti Bai set herself on fire of her own accord, and the appellant also sustained burn injuries, while attempting to extinguish the flames.

11. In the light of contradictory narratives made in the dying declarations of the victim and the appellant, the only question which was required to be answered was, whether Gomti Bai was intentionally set on fire by appellant after pouring kerosene on her and as discussed earlier, the eye - witnesses to the incident, namely; Ramhet (P.W.5) and Babbu (P.W.6) have not at all corroborated the version of Gomti Bai as disclosed in her dying declaration about the circumstances under which she caught fire. We cannot ignore here that being the real brothers of deceased Gomti Bai, these two witnesses would naturally have greater affinity and loyalty towards Gomti Bai than towards the present appellant, yet, they did not support the version given by their sister in her dying declaration.

12. Prior to filing the charge sheet, the statements of Ramhet were recorded by police twice, first during merg enquiry and second at the stage of investigation. Both these statements are Ex.P/7 and P/8 respectively. If we go



through the contents of these statements, we find that they completely lack uniformity regarding the identity of the person who poured kerosene on Gomti Bai. In Ex.P/7, giving statement during merg enquiry, witness Ramhet had stated that Gomti Bai poured kerosene on herself voluntarily, while in Ex.P/8 his version was that the kerosene was poured on her by the appellant. Contradicting both these earlier statements, Ramhet (P.W.5) has stated before the Court that Gomti Bai's *sari* caught fire accidentally. Similar is the nature of statement of Shekhar (P.W.11) given during merg enquiry statement (Ex.P/16), during investigation (Ex.P/17) and during Court testimony as the son of deceased. This shows that prosecution witnesses not only turned hostile, but they were even otherwise inconsistent on material facts regarding the circumstances under which Gomti Bai sustained burn injuries.

13. In this factual set up, where the dying declaration of deceased is running contrary to the eye-witnesses' account, despite the fact that these eye-witnesses were closely related to the deceased, further, there is virtually no explanation on the part of prosecution about the injuries sustained by the appellant in the incident and lastly for the completely hostile testimony of close relatives of the victim on the facts of the case, we can not confirm the finding of conviction recorded by the trial Court. Consequently, this appeal succeeds.

14. Appeal is, accordingly, **allowed**. Appellant is on bail. His bail bonds stand discharged forthwith. The fine amount deposited by him, if any, before the trial Court, shall be refunded to him.



15. The copy of the judgment along with its record be sent back to the trial Court for information and necessary compliance.

(G. S. AHLUWALIA)
JUDGE

(ANURADHA SHUKLA)
JUDGE

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