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CRA-259-2016

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

&

HON'BLE SHRI JUSTICE HIRDESH

ON THE 28th OF NOVEMBER, 2025CRIMINAL APPEAL No. 259 of 2016*BANTI @ VISHWAJEET SINGH BHADAURIYA**Versus**THE STATE OF MADHYA PRADESH*

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Appearance:

*Shri Ashok Kumar Jain and Ms. Nikita Jain- learned Counsel for appellant.**Shri Deependra Singh Kushwah- leaned Additional Advocate General for
respondent-State.*
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ORDER

Per. Justice Hirdesh

Present criminal appeal under Section 374 of the Code of Criminal Procedure has been preferred by appellant- Banti @ Vishwajeet Singh Bhadauriya, assailing the judgment of conviction and order of sentence dated 30.11.2015 passed by learned Fourth Additional Sessions Judge, Bhind, in Special Case No.245 of 2013. By the impugned judgment, appellant was convicted under Section 302 IPC and sentenced to undergo life imprisonment with a fine of Rs.50,000/-, with a default stipulation of one year's rigorous imprisonment. He was further convicted under Section 452 IPC and sentenced to five years' rigorous imprisonment with a fine of Rs.5,000/-, with a default stipulation of six months' rigorous imprisonment. Both sentences were directed to run concurrently.



2. Prosecution case, in brief, is that PW-3 Shantidevi, grandmother of deceased Kirti, resides in Krishna Colony, Bhind, whereas her son Hukum Singh resides nearby with his family. On 20.05.2013, between 10 and 11 a.m., Hukum Singh's wife Lakshmi (PW7) and elder daughter Rani (PW5) had gone to Vankhandeshwar Temple. The deceased, aged about 15 years, was at home along with her younger sister Mohini, who was sitting outside at a small kiosk selling beedis and small packets. During this time, accused Banti allegedly entered the house and attempted to molest the deceased. When the deceased resisted and raised an alarm, the accused picked up a plastic kerosene can lying in the kitchen, poured kerosene on the deceased, and set her ablaze.

3. Hearing the screams of deceased, Mohini cried for help. Neighbours Karu Singh (PW-4) and Subhadra immediately reached the spot and extinguished the flames using a sack and scarf. The deceased, who had sustained severe burn injuries, informed them that the appellant had set her on fire. Soon thereafter, Ajit Singh (uncle of the deceased) and neighbour Guddu Kushwah arrived and rushed the injured girl to the District Hospital, Bhind. She was subsequently referred to J.A. Hospital, Gwalior, where she succumbed to her injuries on 23.05.2013.

4. PW-3 Shantidevi lodged the FIR at Police Station Rural, Bhind, on 20.05.2013 at about 14:00 hours, registered as Crime No.172/2013 for offences under Sections 451, 354, 307 and 326-A IPC (Ex.P-2). Information regarding the deceased being brought in a burnt condition was sent to the



hospital outpost (Ex.P-13). Her medical examination was conducted (Ex.P-3). A dying declaration (Ex.P-9) was recorded by Naib Tehsildar Smt. Vandana Baghel (PW-9) after obtaining medical certification regarding the victim's fitness. The deceased died on 23.05.2013 at J.A. Hospital, Gwalior. Thereafter, Merg No.267/2013 under Section 174 CrPC was recorded. Safina Form (Ex.P-5), Panchanama (Ex.P-6), and requisition for postmortem (Ex.P-7) were prepared. Postmortem revealed 80–90% ante-mortem burns.

5. After receiving the case diary from Police Station Kampoo, Merg No.42/2013 was recorded at Police Station Dehat, Bhind, on 24.05.2013. A spot map (Ex.P-10) was prepared. A plastic kerosene can, matchbox, burnt matchstick, kerosene-soaked soil, plain soil and burnt clothing were seized (Ex.P-11). The accused was arrested (Ex.P-12). Viscera and related materials were seized (Ex.P-16). By letter dated 18.06.2013 (Ex.P-14), seized items were forwarded to the FSL, Sagar, and the FSL report (Ex.P-17) was received. The charge-sheet was filed on 03.07.2013.

6. Charges under Sections 452 and 302 IPC and Section 8 of the POCSO Act were framed. The appellant denied the charges. The prosecution examined 11 witnesses, while DW-1 Surendra has been examined on behalf of appellant. The defence was of false implication, alleging that the deceased had committed suicide due to family harassment.

7. Upon conclusion of the trial, the learned Trial Court, after appreciating oral and documentary evidence, convicted and sentenced the appellant as aforesaid.



8. Assailing the judgment, learned counsel for the appellant submitted that the dying declaration (Ex.P-9) is not reliable, as the deceased suffered extensive burns of 80% to 90% and was allegedly not in a physical condition to make a coherent statement. It was further contended that the person certifying fitness prior to the recording of the dying declaration by Naib Tehsildar Smt. Vandana Baghel (PW-9) was not examined. FIR was lodged belatedly at 14:00 hours, whereas the incident allegedly occurred around 09:00 a.m., as per the grandmother of the deceased. No witness stated that the appellant held the kerosene can; only neighbour Karu Singh (PW-4) alleged that the appellant was running from the spot, which cannot establish that the appellant set the deceased on fire. Prior enmity existed as the father of the deceased allegedly sold illicit liquor, and the appellant objected. It was argued that the deceased might have committed suicide due to a family dispute and that the appellant was falsely implicated. It was further contended that material witnesses were related and interested, making improvements over earlier statements. No wholly independent witness supports the prosecution beyond suspicion. Therefore, the prosecution failed to prove charges beyond reasonable doubt, and the appellant sought acquittal. It was lastly argued that even if the prosecution story is accepted, the offence at best falls under Section 304 Part I or Part II IPC, and the Court should adopt leniency since the appellant has undergone nearly 12 years of custody.

9. *Per contra*, by placing reliance on the judgments of the Hon'ble Apex Court in **State of U.P. vs. Anil Singh, 1988 AIR 1998; Appabhai and**



Another vs. State of Gujarat, AIR 1988 SC 696; and Jemaben vs. The State of Gujarat, 2025 INSC 1268, it is contended on behalf of the State that the appeal deserves dismissal. By supporting the impugned judgment of conviction and order of sentence, it is further contended that the dying declaration (Ex.P-9) was recorded by an independent Executive Magistrate after obtaining medical fitness certification; it was consistent, voluntary, and trustworthy. The medical, ocular, and forensic evidence fully corroborated the dying declaration. It was further contended that neither Part I nor Part II of Section 304 IPC is attracted, as the act of the appellant clearly establishes intention to cause death, thereby attracting Section 302 IPC. No leniency is warranted considering the heinousness and brutality of the act.

10. Heard the learned counsel for the parties and carefully perused the record.

11. The principal issues for determination are: (i) Whether the oral and written dying declarations (Ex.P-9) are reliable, voluntary, and inspire confidence; and (ii) Whether the prosecution has proved beyond reasonable doubt that the appellant trespassed into the house and intentionally set the deceased ablaze.

12. The contention of the appellant that the deceased was physically incapable of giving a coherent statement owing to extensive burn injuries, and that the doctor who certified her fitness was not examined, requires scrutiny in light of the settled principles governing dying declarations.



13. The Hon'ble Supreme Court in **Naeem v. State of U.P., 2024 SCC OnLine SC 237**, has reiterated the parameters governing reliance upon dying declarations, stating inter alia that a dying declaration can be the sole basis of conviction if it inspires full confidence, is voluntary, and the deceased was in a fit mental condition to make the statement. The Hon'ble Supreme Court in **Naeem (supra)** held as under:-

“22.(i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.

(ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.

(iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

(iv) 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.

(v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.

(viii) Even if it is a brief statement, it is not to be discarded.

(ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.

(x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.”

14. The landmark judgment in **Kushal Rao v. State of Bombay, AIR**



1958 SC 22, further laid down authoritative principles regarding the evidentiary value of dying declarations. The Hon'ble Apex Court held that a dying declaration stands on equal footing with other evidence, can be relied upon even without corroboration, and that one recorded by a competent Magistrate stands on a much higher pedestal. In this case, the Hon'ble Apex Court laid down the following principles as to the circumstances under which a dying declaration may be accepted, without corroboration:-

“16. On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, aforesaid, (1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; (5) that a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and (6) that in order to test the reliability of a dying declaration, the court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.

The relevant facts of the said case are that the deceased therein had given three successive dying declarations within a span of two hours, which were, to a certain degree contradictory to each other.



However, one of the aspects that remained common and was narrated by the deceased in all three dying declarations was that he was attacked by two persons, namely Kushal Rao and Tukaram with swords and spears. This Court, relying on the common thread running through all dying declarations, which was consistent with medical evidence revealing punctured and incised wounds on various parts of the body, held that the said declarations could be relied upon in convicting the accused who had been named in all three dying declarations."

15. There is neither a rule of law nor a rule of prudence that a dying declaration cannot be acted upon without corroboration, provided it is voluntary, true, and made in a fit state of mind. The Hon'ble Apex Court also clarified that absence of details or brevity in dying declaration is not a ground for rejection. In the case of **Paniben (Smt.) v. State of Gujarat (1992) (2) SCC 474**, the Hon'ble Apex Court on examining the entire conspectus of law on the principles governing dying declaration, had concluded as under:-

"18. (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (*Munnu Raja v. State of M.P. (1974) 4 SCC 264*),

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (*State of U.P. v. Ram Sagar Yada*[1981 sup SCC 25]; *Ramawati Devi v. State of Bihar*1981 8(2) SCC 654).

(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (*K. Ramachandra Reddy v. Public Prosecutor* 1980 supp SCC 455) .

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (*Rasheed Beg v. State of M.P. 1980 supp SCC 769*).

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (*Kake Singh v. State of M. P. [1988 Supp SCC 152]*).

(vi) A dying declaration which suffers from infirmity cannot form



the basis of conviction. (Ram Manorath v. State of U.P. [1989 (2) SCC 390])

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurti Laxmipati Naidu [1980 supp SCC 455])

(viii) Equally, merely because it is a brief statement, it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth. (Surajdeo Oza v. State of Bihar²⁵).

(ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanahau Ram v. State of M.P. [2001 (5) SCC 254]).

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (State of U.P. v. Madan Mohan [2003 (12) SCC 490]).

16. Similarly, where there are multiple dying declarations, each must be examined with great care and caution, and the Court must determine which one is free from suspicious circumstances. It was further held by the Hon'ble Apex Court that a medical certificate is a rule of caution, not an absolute legal necessity, and that voluntariness and truthfulness are paramount. In the case of **Uttam vs. State of Maharashtra (2022) 8 SCC 576** in para no.15 and 19 it was observed by Hon'ble Apex Court as under:-

“15. In cases involving multiple dying declarations made by the deceased, the question that arises for consideration is as to which of the said dying declarations ought to be believed by the Court and what would be the guiding factors for arriving at a just and lawful conclusion. The problem becomes all the more knotty when the dying declarations made by the deceased are found to be contradictory. Faced with such a situation, the Court would be expected to carefully scrutinize the evidence to find out as to which of the dying declarations can be corroborated by other material evidence produced by the prosecution. Of equal significance is the condition of the deceased at the relevant point in time, the medical evidence brought on record that would



indicate the physical and mental fitness of the deceased, the scope of the close relatives/family members having influenced/tutored the deceased and all the other attendant circumstances that would help the Court in exercise of its discretion.

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19. It is thus clear that in cases where the Court finds that there exist more than one dying declarations, each one of them must be examined with care and caution and only after satisfying itself as to which of the dying declarations appears to be free from suspicious circumstances and has been made voluntarily, should it be accepted. As observed in the judgments quoted above, it is not necessary that in every case, a dying declaration ought to be corroborated with material evidence, ocular or otherwise. It is more a rule of prudence that courts seek validation of the dying declaration from attending facts and circumstances and other evidence brought on record. For the very same reason, a certificate by the doctor that the declarant was fit to make a statement, is treated as a rule of caution to establish the truthfulness of the statement made by the deceased.”

17. PW-9 Smt. Vandana Baghel, Naib Tehsildar, deposed that she recorded the dying declaration after receiving medical certification. She stated that the deceased was conscious and capable of giving a statement. The dying declaration (Ex.P-9) recorded by her clearly states that the appellant entered the house, attempted to misbehave with the deceased, and on her resistance, poured kerosene and set her ablaze. She obtained the thumb impression of the deceased as the latter was unable to sign. PW-9 stood firm during cross-examination, and nothing material was elicited to discredit her testimony.

18. Medical evidence further strengthens the prosecution case. PW-6 Dr. Rajouria noted the smell of kerosene and burn patterns consistent with



kerosene being poured and ignited. PW-1 Dr. Nikhil Agarwal, who conducted the postmortem, found 80–85% ante-mortem burns and confirmed death due to shock and complications arising from burn injuries. These injuries were fully consistent with the prosecution version.

19. The dying declaration was recorded within a few hours of the incident, after medical certification, by an independent Executive Magistrate. It contains a clear and consistent narrative implicating the appellant. The deceased had no motive to falsely implicate the appellant. The dying declaration appears voluntary and does not suffer from any infirmity. It is fully corroborated by medical and ocular evidence and inspires full confidence.

20. The contention of learned counsel for the appellant that PW-2, PW-3, PW-5 and PW-7 are related witnesses and therefore interested witnesses, is devoid of merit. The law is settled that relationship per se does not discredit a witness. The Hon'ble Apex Court in **Shamim v. State (NCT of Delhi)**, (2018) 10 SCC 509, held that testimony of close relatives ordinarily carries weight, as they would not screen the real culprit. The principles laid down in **Rizan v. State of Chhattisgarh**, (2003) 2 SCC 661, further clarify that relationship is not a ground for discarding testimony unless animosity or motive for false implication is shown.

21. In the case of **Dalip Singh v. State of Punjab**, AIR 1953 SC 364, the Supreme Court observed that close relatives are often the most natural witnesses, and their evidence cannot be discarded solely on the ground of



relationship. A similar view has been reiterated in numerous decisions including **Masalti v. State of U.P.**, AIR 1965 SC 202 , and **State of Punjab v. Jagir Singh**, AIR 1973 SC 2407.

22. Therefore, the contention that related witnesses should not be relied upon is misconceived. Their evidence must be scrutinised with care but cannot be rejected merely for being related.

23. The testimonies of PW-2 Shiv Singh and PW-3 Shantidevi show that both saw the accused running out of the house immediately after the incident. The deceased emerged in a burnt condition and declared that the appellant had set her ablaze. PW-4 Karu Singh, who extinguished the flames, testified that the deceased repeatedly named the appellant.

24. PW-5 Rani and PW-7 Lakshmi, who returned from the temple after the incident, deposed that at the hospital, the deceased informed them that the appellant attempted to outrage her modesty and thereafter poured kerosene and set her ablaze. Their cross-examination also supports the prosecution case, and there are no material discrepancies. The entire chain of circumstances as disclosed in the depositions of these witnesses coherently supports the prosecution version. Their testimonies are consistent and corroborated by medical and forensic evidence.

25. So far as the further contention of learned counsel for the appellant that the appellant has been falsely implicated because the deceased might have committed suicide due to domestic dispute is concerned, the defence plea of suicide or false implication is devoid of substance. No witness



supported the theory of suicide. The deceased consistently named the appellant before multiple persons immediately after the incident. The presence of kerosene in the kitchen does not support the defence plea, and the burn pattern indicates pouring of kerosene rather than accidental burning or self-infliction. The defence failed to establish any circumstance to probabalise the plea of suicide or false implication. No evidence suggests that the deceased set herself on fire voluntarily. On the contrary, consistent statements made by the deceased as well as the testimonies of eyewitnesses indicate deliberate action by the appellant. Therefore, the defence plea that the deceased committed suicide due to family dispute is wholly untenable. No evidence supports this theory. The dying declaration and statements made to immediate witnesses rule out suicide.

26. The prosecution has established that the appellant trespassed into the house with intent to commit an offence, attracting Section 452 IPC. The evidence that the appellant was seen fleeing the spot corroborates the prosecution case.

27. The next contention of the appellant that the FIR was lodged belatedly at 14:00 hours, whereas the incident occurred around 10–11 a.m., is also without merit. It is a well-settled principle that slight delay in lodging the FIR does not render it unreliable, particularly where reasons for delay are natural and the prosecution has otherwise produced credible evidence corroborating the occurrence. Therefore, belated lodging of the FIR is not fatal to the prosecution case.



28. On behalf of the appellant, it was alternatively pleaded that even if the prosecution version is accepted, the case would fall under Section 304 Part I or Part II IPC and not under Section 302 IPC. The prayer for leniency is premised on the fact that the appellant has already undergone nearly 12 years of incarceration.

29. To determine whether the offence falls under Section 302 IPC or under Section 304 (Part I or Part II), the guiding principles have been laid down by Hon'ble Supreme Court in a catena of decisions including judgments in **Virsa Singh vs. State of Punjab**, AIR 1958 SC 465, and **Anda vs. State of Rajasthan**, AIR 1966 SC 148, wherein the Hon'ble Apex Court clearly specified that Section 302 IPC applies where the act is deliberate and intention to cause death is evident. Section 304 Part I applies where intention to cause such bodily injury is present but death is not specifically intended. Section 304 Part II applies where no intention exists but knowledge of the likelihood of death is present. In the present case, the accused entered the house of a minor girl in the absence of adult supervision. He attempted to outrage the modesty of the deceased. On her resistance, the appellant poured kerosene on her using a plastic can and thereafter lit a matchstick and set her ablaze, as a result of which the deceased suffered 80–90 per cent burns, a near-fatal injury in the ordinary course of nature. These acts unmistakably demonstrate conduct of the appellant which leaves no room for an inference that the appellant did not intend to cause death. His act is a direct, conscious, and brutal assault on a minor girl, squarely falling under Section 302 IPC. Therefore, neither Part I nor Part II of Section 304 IPC is attracted.



30. The prayer of the appellant for leniency on the ground of long period already undergone, absence of criminal record, and his social and family background, is also devoid of merit. The Hon'ble Supreme Court has consistently held that leniency cannot be granted merely because the accused has undergone a substantial period of sentence when the offence is heinous, and it has been reiterated that setting a person on fire is among the most heinous forms of violence, and the Court must impose stern punishment in this regard.

31. Therefore, the conduct of the appellant in entering the house, attempting to molest the deceased, pouring kerosene upon her, and setting her on fire clearly manifests intention to cause death or, at the very least, knowledge that such act would, in the ordinary course of nature, cause death. Burn injuries of 80–90% are sufficient to cause death, and the act of the appellant does not fall within any of the exceptions to Section 300 of the Indian Penal Code. Therefore, the conviction of the appellant under Section 302 recorded by the learned Trial Court is well-founded. This Court finds no mitigating circumstances warranting leniency. The crime is of extreme brutality committed against a vulnerable minor, and society's conscience would be shocked if leniency were shown. Accordingly, the plea of leniency is rejected.

32. Upon comprehensive evaluation of the prosecution evidence viz. ocular, medical, forensic and dying declaration, the guilt of the appellant is established beyond reasonable doubt. This Court finds no illegality or



perversity in the impugned judgment passed by the Trial Court. No grounds exist to invoke Section 304 Part I or Part II IPC or to extend leniency.

33. Consequently, the appeal is devoid of merit and is accordingly **dismissed**. The impugned conviction and order of sentence dated 30.11.2015 passed by the learned Fourth Additional Sessions Judge, Bhind, in Special Case No.245 of 2013, are affirmed *in toto*.

34. The appellant is in custody and shall continue to undergo the sentence imposed by the learned Trial Court. The remaining sentence shall be carried out as per law.

35. A copy of this judgment along with the Trial Court record be transmitted to the Court below. A copy shall also be furnished to jail authorities for necessary information and compliance.

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE

MKB