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RAM VISWAS

v.

THE STATE OF MADHYA PRADESH
(Criminal Appeal No. 2048 of 2012)

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DECEMBER 14, 2012

[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

Penal Code, 1860 - s.302 - Death of married woman due to burn injuries - Prosecution case that the victim's husband

- C *i.e. the appellant had poured kerosene oil on her and set her on fire - In the dying declaration recorded by the Naib Tahsildar, the victim named the appellant for the overt act - Conviction of appellant u/s. 302 IPC with RI for life - Justification - Held: The dying declaration satisfied all the prescribed conditions and procedure and was proved beyond doubt - Prosecution was fully justified in relying on the dying declaration - Appellant was the only person inside the room at the time of the incident along with the victim - Even if it is accepted that in the course of the said incident he sustained some burn injuries, it is not a ground for exonerating his guilt - Merely because there was no sign of smell of kerosene oil from the bed sheet, quilt and pillow, the case of the prosecution cannot be thrown out - Conviction of appellant accordingly upheld - Evidence Act, 1872 - s.32.*
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According to the prosecution, in order to get rid of his wife, the appellant poured kerosene oil on her and set her on fire. The victim sustained 100% burn injuries. Her statement/declaration was recorded wherein she named the appellant for the overt act. Later she succumbed to her injuries. The trial Court convicted the appellant under Section 302 IPC and sentenced him to suffer RI for life.

- G *The conviction and sentence was affirmed by the High Court and therefore the instant appeal.*

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Dismissing the appeal, the Court

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HELD: 1. It is seen from the FIR (Exh.P-4) that the accused-appellant was not happy with his married life and had frequent quarrels with the deceased. A perusal of the FIR further shows that on 03.02.1998, in the midnight, when the appellant and the deceased alone were in the house, the appellant poured kerosene oil on the deceased and set her on fire. It is further seen that on hearing the cry of the deceased, a number of persons entered into the room when the appellant himself opened the door from inside and a report was made to the police. [Para 7] [1115-A-C]

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2. The dying declaration Exh.P-11 made by the victim was recorded by Naib Tahsildar, (PW-11) wherein it was stated that the victim's husband abused her and compelled her to go away from his house. She further stated that on the fateful night, when they were sleeping together, he poured kerosene oil on her and set fire. She further narrated that when she shouted for help, neighbours came in and she was taken to G.M.Hospital, Rewa. The above statement was recorded at 3.25 p.m. on 04.02.1998. Before recording the above statement, the doctor concerned certified that she was fit for giving a statement. The doctor also certified that the patient was conscious while giving the dying declaration. Inasmuch as the Tahsildar (PW-11) recorded her statement after fulfilling all the formalities and her condition was also specified as seen from the certificate of the doctor, there is no reason to reject the same, on the other hand, as rightly accepted by the trial Court and the High Court, the prosecution is fully justified in relying on the same. The dying declaration satisfied all the prescribed conditions and procedure and is proved beyond doubt. [Paras 8, 9, 10] [1115-D-H; 1116-B]

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3. As rightly observed by the trial Court and the High

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- A Court, merely because there was no sign of smell of kerosene oil from the bed sheet, quilt and pillow, the case of the prosecution cannot be thrown out. [Para 10] [1116-A]
- B 4. It is clear from the prosecution case that the appellant was the only person inside the room at the time of the incident along with his wife. Even if it is accepted that in the course of the said incident he sustained some burn injuries, it is not a ground for exonerating his guilt. Dr. (PW-8) has stated that on 04.02.1998 he examined the victim and found her conscious and fit to make a statement. The said report has also been marked as Exh.P-11 and the statement of the deceased was recorded by the Executive Magistrate in his presence. [Para 11] [1116-C-D]
- D 5. In the light of the above discussion and on perusal of the entire material relied on by the prosecution and the defence, it is clear that the conclusion arrived at by the courts below is correct. [Para 12] [1116-E]
- E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2048 of 2012.
From the Judgment & Order dated 25.06.2008 of the High Court of Madhya Pradesh at Jabalpur (M.P.) in Criminal Appeal F No. 884 of 2000.
- G S.C. Patel, Meera Kaura, Tejas Patel for the Appellant.
Vibha Dutta Makhija for the Respondent.
- H The Judgment of the Court was delivered by P. SATHASIVAM, J. 1. Leave granted.
2. This appeal is directed against the judgment and order dated 07.05.2009 passed by the High Court of Judicature at

Jabalpur, Madhya Pradesh in Criminal Appeal No. 884 of 2000 A
whereby the Division Bench of the High Court dismissed the
appeal filed by the appellant herein.

3. Brief facts:

(a) This case relates to one Maladeep, resident of village Semaria, District Rewa, Madhya Pradesh, who was burnt to death by her husband-Ram Viswas, the appellant herein by pouring kerosene oil. B

(b) Maladeep (the deceased) and Ram Viswas were married to each other but were not in good terms. The appellant herein was not happy with his married life and often used to quarrel with Maladeep. He was actually forcing his wife to leave her matrimonial home which was not agreeable to her. C

(c) In order to get rid of her, on 03.02.1998, in the midnight, the appellant herein poured kerosene oil on Maladeep and set her on fire. On hearing her cries, a number of persons gathered on the spot and tried to extinguish the fire. The appellant herein also tried to douse the fire and got his hands burnt. D E

(d) Maladeep was taken to the G.M. Hospital, Rewa and a First Information Report (FIR) being No. 10/98 was registered against the appellant herein with the Police Station Semaria. On 04.02.1998, the CMO, G.M. Hospital Rewa, opined that she had sustained 100% burn injuries and at about 03:05 p.m., the statement of Maladeep was recorded wherein while narrating the whole story, she named her husband-the appellant herein for the overt act. On 07.02.1998, she succumbed to her injuries. F

(e) After filing of the charge sheet, the case was committed to the Court of Sessions Judge, Rewa, (M.P.) and numbered as Session Case No. 80/98. The trial Court, by order dated 22.04.1999, convicted the appellant under Section 302 of the Indian Penal Code, 1860 (in short 'the IPC') and sentenced him to suffer RI for life along with a fine of Rs. 100/-, in default, to further undergo RI for 1 month. G H

A (f) Being aggrieved, the appellant herein preferred Criminal Appeal No. 884 of 2000 before the High Court. By judgment and order dated 07.05.2009, the High Court dismissed the appeal filed by the appellant herein. Questioning the same, the appellant has filed this appeal by way of special leave before

B this Court.

4. Heard Mr. S.C. Patel, learned counsel for the appellant-accused and Ms. Vibha Dutta Makhija, learned counsel for the respondent-State.

C 5. Learned counsel for the appellant, after taking us through the entire material relied on by the prosecution, reasoning of the trial Court and the High Court submitted that there are material omissions in the dying declaration - Exh. P-11 which also differ from the contents of the First Information Report (Exh.

D P-4), hence, the courts below ought not to have accepted the prosecution case. He further submitted that in the absence of smell of kerosene from the bed sheet, quilt and the pillow, the entire statement in the form of dying declaration is to be rejected. He finally submitted that even if the case of the

E prosecution is acceptable, in view of the fact that the appellant tried to extinguish the fire and by such conduct at the most, he would be punishable only under Section 304 Part II IPC and not under Section 302. On the other hand, Ms. Vibha Dutta Makhija, learned counsel for the State submitted that the very same

F contentions were raised by the accused before the trial Court and the High Court and taking note of the statement of the deceased in the form of dying declaration, all other relevant materials and compliance of all the formalities, the said objections were rejected, hence, there is no valid and acceptable ground for interference with the concurrent findings of the courts below by exercising jurisdiction under Article 136 of the Constitution of India.

G 6. We have carefully considered the rival submissions and perused all the relevant materials.

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7. As rightly pointed out by the counsel for the State, it is seen from the FIR (Exh.P-4) that the accused was not happy with his married life and they had frequent quarrels. A perusal of the FIR further shows that on 03.02.1998, in the midnight, when the accused and the deceased alone were in the house, the accused poured kerosene oil on the deceased and set her on fire. It is further seen that on hearing the cry of the deceased, a number of persons entered into the room when the accused himself opened the door from inside and a report was made to the police. No doubt, a perusal of the FIR shows that her husband, the present appellant also tried to extinguish the fire.

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8. In the light of the contents of the FIR (Ex.P-4), now we have to consider the dying declaration which is Exh.P-11 made by the deceased recorded by Rajendra Tiwari, Naib Tahsildar, (PW-11) wherein it was stated that her husband abused her and compelled her to go away from his house. She further stated that on the fateful night, when they were sleeping together, he poured kerosene oil on her and set fire. She further narrated that when she shouted for help, neighbours came in and she was taken to G.M.Hospital, Rewa. The above statement was recorded at 3.25 p.m. on 04.02.1998.

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9. Before recording the above statement, the doctor concerned certified that she was fit for giving a statement. The doctor also certified that the patient was conscious while giving the dying declaration. Inasmuch as the Tahsildar (PW-11) recorded her statement after fulfilling all the formalities and her condition was also specified as seen from the certificate of the doctor, there is no reason to reject the same, on the other hand, as rightly accepted by the trial Court and the High Court, we are also of the view that the prosecution is fully justified in relying on the same. No doubt, in her statement as stated in the FIR (Exh. P-4) that her husband tried to save her was not stated in the dying declaration. Inasmuch as the dying declaration satisfied all the prescribed conditions and procedure, we are not inclined to accept the stand taken by learned counsel for the appellant.

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- A 10. As rightly observed by the trial Court and the High Court, merely because there was no sign of smell of kerosene oil from the bed sheet, quilt and pillow, the case of the prosecution cannot be thrown out. Since the dying declaration (Exh.P-11) is proved beyond doubt, as discussed above, we
- B reject the argument of the counsel for the appellant. For the same reasons, the appellant cannot be convicted only under Section 304 Part II IPC.

- C 11. It is clear from the prosecution case that the accused was the only person inside the room at the time of the incident along with his wife. Even if it is accepted that in the course of the said incident he sustained some burn injuries, it is not a ground for exonerating his guilt. We have already observed that Dr. Manish Kaushal (PW-8) has stated that on 04.02.1998 he examined the injured - Maladeep and found her conscious and fit to make a statement. The said report has also been marked as Exh.P-11 and the statement of the deceased was recorded by the Executive Magistrate in his presence.
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- E 12. In the light of the above discussion and on going through the entire material relied on by the prosecution and the defence, we are unable to agree with the argument of the counsel for the appellant, on the other hand, we concur with the conclusion arrived at by the courts below. Consequently, the appeal fails and the same is dismissed.

- F 13 Learned counsel for the appellant by pointing out the fact that the appellant had served more than 14 years in prison, prayed for appropriate direction for his release as per Jail Manual. Without expressing any opinion on the merits of his claim, inasmuch as we dispose of his appeal, the State is free
- G to consider the same in accordance with the Rules/Instructions/ Jail Manual applicable to the appellant. With the above observation, the appeal is dismissed.

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Appeal dismissed.

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