

**SUPREME COURT OF INDIA**

Suresh

Vs.

State of M.P.

Crl.A.No.364 of 1986

(G. L. Oza and M. M. Dutt, JJ.)

27.01.1987

**JUDGEMENT**

**DUTT, J.:-**

1. This appeal by special leave is directed against the Judgment of the Madhya Pradesh High Court affirming the order of the learned First Additional Sessions Judge, Ujjain, convicting the appellant under S. 302, IPC and sentencing him to undergo rigorous imprisonment for life for the murder of his mistress Lachhibai.

2. The prosecution case, in brief, was that Lachhibai was the mistress of the appellant and they had been living together for a period of 15/16 years. There used to be frequent quarrels between them. It is not disputed that the appellant's married wife was living separately from him. In the night of June 8, 1983 there had been a quarrel between the appellant and Lachhibai. On the next day, that is, on June 9, 1983 at 10.45 a.m., the appellant poured kerosene oil on her and thereafter set fire to her with the help of a lighted matchstick, in consequence of which the whole body of Lachhibai got burnt externally. She was removed to the hospital at the instance of Station House Officer, Manohar

Lal Bhandari (P.W. 10).

3. Dr. Smt. Asha Bhargava (P.W. 1) examined Lachhibai and found that the whole of her body had sustained hundred per cent burns of second degree. She was conscious but her condition was serious. At the request of P.W. 10, Dr. Bhargava recorded her dying declaration (Ex. P-5). In her dying declaration it was stated by Lachhibai that after a quarrel the appellant had poured kerosene oil on her and burnt her. At about 12.45 p.m. she succumbed to her injuries on the same day. The post-mortem examination was also conducted by Dr. Bhargava and she found that Lachhibai died on account of hundred per cent burns of second degree. In her opinion, these burns were ante-mortem and were sufficient to cause death. After the conclusion of investigation, the appellant was prosecuted on a charge under S. 302, IPC for murdering Lachhibai.

4. The defence of the appellant was that as he had married one Shardabai, the deceased used to quarrel with him in order to sever his relation with Shardabai on the threat of committing suicide and false implication. It was alleged by him that in the morning of June 9, 1983, he was at the radio-shop of his friend, Ramesh (D.W. 1), and on an information given to him by one Raj Bhanwar that Lachhibai had sustained burns, he had reached home and found Lachhibai lying in an unconscious burnt state.

5. The learned First Additional Sessions Judge, after considering the evidence and particularly the dying declaration overruled the defence plea and held that the charge against the appellant was proved beyond any reasonable doubt. The appellant was, accordingly, convicted under S. 302, IPC and sentenced to undergo rigorous imprisonment for life, The High Court dismissed the appeal preferred by the appellant and affirmed the conviction and sentence. Hence this appeal.

6. The only point that has been urged by the learned counsel appearing on behalf of the appellant is that the dying declaration which was recorded by Dr. Bhargava should not be relied upon inasmuch as at the time when the dying declaration was stated to have been recorded by her, Lachhibai was sinking and was unable to make any statement. Our attention has been drawn by the learned Counsel to the post-mortem report of Dr. Bhargava. It is submitted that in view of the serious injuries sustained by Lachhibai on account of the burns, she must be in an unconscious state at the time her dying declaration was stated to have been recorded.

7. We are unable to accept the contention. Dr. Bhargava had examined Lachhibai. According to her Lachhibai was in a fit state of health to make a declaration. Indeed, her evidence is that when she recorded the dying declaration of Lachhibai, she was capable of deposing and was in her senses. She further stated that when she was recording her dying declaration, "she had started going into coma".

8. The learned First Additional Sessions Judge and the High Court have believed the evidence of Dr. Bhargava and have placed reliance upon the dying declaration in convicting the Appellant. We do not find any reason not to believe the evidence of Dr. Bhargava. In the circumstances, we are of the view that the courts below were justified in convicting the appellant under section 302 of IPC. No other point has been urged on behalf of the appellant.

9. There is, therefore, no substance in the appeal. It is accordingly, dismissed.

Appeal dismissed.