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DASIN BAI@ SHANTI BAI
v.
STATE OF CHHATTISGARH
(Criminal Appeal No.827 of 2008)

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FEBRUARY 11, 2015.

[M.Y. EQBAL AND PINAKI CHANDRA GHOSE, JJ.]

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Penal Code, 1860 – s. 302 – Murder – By setting the deceased on fire – Circumstantial evidence – Conviction under, by Courts below relying on the dying declaration – On appeal, held: Conviction was justified – Truthfulness of the dying declaration cannot be doubted – It was within special knowledge of the accused as to how the deceased came to the premises of her house and how he got burnt – Thus, the

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burden to prove those facts is upon the accused u/s.106 of Evidence Act – The failure of the accused to discharge the burden cast upon her u/s. 106, provides an additional link in the chain of circumstances proved against her – When the facts are clear, absence of motive to kill is inconsequential and does not break the chain of circumstances – Evidence

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Act, 1872 – s.106 – Dying Declaration – Motive – Evidence – Circumstantial Evidence.

Dismissing the appeal, the Court

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HELD : 1.1. If the truthfulness or otherwise of the dying declaration cannot be doubted, the same alone can form the basis of conviction of an accused and the same does not require any corroboration, whatsoever in law. [Para 10] [1064-G]

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Ravi & Anr. v State of T.N. 2004 (10) SCC 776; Mafabhai NagarbhaiRaval v. State of Gujarat (1992) 4 SCC 69 – relied on.

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1.2. There is consistency between the statements of PW1 and PW3, who were present when the deceased gave the oral dying declaration in the hospital, before he succumbed to the injuries. There is consistency in their statements. [Para 12] [1065-E-F]

1.3. Merely because the deceased suffered 70 per cent burns, this does not raise an assumption that he could not have given the oral dying declaration. The High Court was right in believing the oral dying declaration of the deceased as it did not suffer from any infirmity. [Para 14] [1066-E-F]

Pothakamuri Srinivasulu v. State of A.P. (2002) 6 SCC 399 – relied on.

2. When there is any fact especially within the knowledge of a person, the burden of proving that fact is upon him. Where the presence of special knowledge is with the accused, “in a case resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of the burden placed on him by Section 106, that itself provides an additional link in the chain of circumstances proved against him.” The appellant-accused is unable to discharge the burden cast upon her by Section 106 of the Evidence Act, as it was within her special knowledge as to how the deceased came into the premises of her house. [Paras 15, 16 and 18] [1067-A, C, D, H]

State of Rajasthan v. Kashi Ram, (2006) 12 SCC 254: 2006 (8) Suppl. SCR 501; *Babu alias Balasubramaniam & Anr. v. State of Tamil Nadu* (2013) 8 SCC 60 – relied on.

3. The ground of defense taken by the appellant, that she did not have any motive to kill the deceased, is ill founded and does not break the chain of circumstances. Therefore, when facts are clear it is not necessary to have

A **proof of motive or ill-will to sustain conviction. [Para 19]
[1068-A-B]**

*Mulakh Raj & Ors. v. Staish Kumar & Ors. (1992) 3 SCC
43:1992 (2) SCR 484 – relied on.*

B **Case Law Reference :**

2004 (10) SCC 776 relied on Para 10

(1992) 4 SCC 69 relied on Para 11

C (2002) 6 SCC 399 relied on Para 13

2006 (8) Suppl. SCR 501 relied on Para 15

(2013) 8 SCC 60 relied on Para 17

1992 (2) SCR 484 relied on Para 19

D **CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 827 of 2008**

From the Judgment and Order dated 01.12.2006 of the
High Court of Chhattisgarh, Bilaspur in CRLA No. 1171 of 2001.

E Chaitanya Siddhartha (A.C.) for the Appellant.

Apporv Kurup, Sakshi Kakkar, C. D. Singh for the
Respondent.

F The Judgment of the Court was delivered by

PINAKI CHANDRA GHOSE, J. 1. This appeal has been
filed by Dasin Bai against the judgment and order dated 1st
December, 2006 passed by the High Court of Chhattisgarh at
Bilaspur in Criminal Appeal No.1171 of 2001 by which the High
Court while upholding the findings of the Trial Court has
dismissed the appeal filed by the appellant. The facts of the
case as narrated by the prosecution are briefly stated as under:

H 2. On February 1, 2000, in the evening, one Raju Rajak
(who is the deceased in this case) was roaming near Kargi

road railway station after finishing his work in a hotel. There he met with Dasin Bai, the Appellant herein. On the request of Dasin Bai, he went to drop her to her house at Kotsagar Para, Kota, and after dropping her there when he was returning, Dasin Bai asked her to stay back at her house. The deceased slept there by covering himself with a quilt. While he was asleep, Dasin Bai poured Kerosene, kept in a Jerricane, on him. The deceased woke up by the smell of Kerosene and at the same time, Dasin Bai set him on fire with a match stick. He got burnt and shouted for help. On hearing his shout, a neighbor, namely Santosh Yadav and others ran towards the house of Dasin Bai.

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3. Santosh Yadav covered the body of the deceased with a shawl while Dasin Bai was standing there. Santosh Yadav (PW 1) brought Raju Rajak out, while the smell of kerosene was still emanating from the body of Raju. Raju disclosed that Dasin Bai poured kerosene on him and set him on fire. Raju was taken to Primary health centre, Kota and then he was taken to District hospital, Bilaspur for treatment where on 3.2.2000 he died. In the hospital, dying declaration of Raju was recorded by S.L. Soni (PW 12) in the presence of Radheyshyam (PW 3), Santosh and Basant Singh.

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4. The investigating officer seized burnt bedding, bed sheet, plastic jerrican, one match box, one half-burnt match stick, half burnt clothes of the deceased and one wrist watch from the place of occurrence. Upon investigation, it was found that Dasin Bai committed murder by setting the deceased on fire. She was arrested, the charge-sheet was filed and the case was committed to the Sessions for trial.

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5. The Prosecution examined 12 witnesses to establish the charge against the accused. Statement of the accused was recorded under section 313 of the Code of Criminal Procedure, 1973. The accused examined one witness, namely, Basant Singh Thakur in her defence.

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6. The Sessions Court after hearing the counsel on both

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A the sides and after perusing the record, by its judgment dated
September 29, 2001, convicted the appellant under Section
302 of the Indian Penal Code and sentenced her to life
imprisonment. Aggrieved by the said judgment of conviction and
sentence, the appellant preferred an appeal before the High
B Court of Chhattisgarh at Bilaspur. The High Court upheld the
judgment of conviction and sentence rendered by the Trial Court
and dismissed the appeal filed by the appellant. Against the
judgment and order passed by the High Court, the appellant
has filed this appeal petition from jail.

C 7. The learned counsel for the appellant contended that the
dying declaration should not have been relied upon by the Trial
Court and the High Court. It was his case that considering the
extent of burns, sustained by the deceased, it was impossible
D on his part to give any dying declaration. The learned counsel
for the appellant further contended that the evidence provided
by the prosecution was not free and independent since they
were putting forward the version of interested witnesses.

E 8. The learned counsel for the respondents on the other
hand supported the impugned judgment of the High Court.

9. We have heard the learned counsels for the parties. We
see no reason to doubt the veracity of the dying declaration
especially since there is consistency between them.

F 10. This Court has observed in a number of cases, that
there is no reason to doubt the veracity of the dying declaration
especially, since there is consistency between them. In the case
of *Ravi & Anr. v State of T.N.* (2004 (10) SCC 776), it has been
held by this Court that if the truthfulness or otherwise of the dying
G declaration cannot be doubted, the same alone can form the
basis of conviction of an accused and the same does not
require any corroboration, whatsoever in law.

H 11. In *Mafabhai Nagarbhai Raval v. State of Gujarat*,
(1992) 4 SCC 69 it has been held by this Court:

“It must be noted that PW2 recorded the statement within five minutes and noted time also in the statement. The High Court has rightly pointed out that both the dying declarations are true and voluntary. It is not the case of the defense that she gave a tutored version. The entire attack of the defense was on the mode of recording the dying declarations and on the ground that the condition of the deceased was serious and she could not have made the statements. On these aspects as noted above, the evidence of the doctor is important and relevant. We have gone through the evidence of the doctor as well as that of the Executive Magistrate. We find absolutely no infirmity worth mentioning to discard the evidence. It therefore emerges that both the dying declarations are recorded by independent witnesses and the same give a true version of the occurrence as stated by the deceased. The dying declarations are themselves sufficient to hold the appellant guilty. The High Court has rightly interfered in an appeal against acquittal. The appeal is accordingly dismissed.”

12. For the factual situation before us, we find that there is consistency between the statements of Santosh Yadav (PW1), and Radheyshyam (PW3), who were present when Raju gave the oral dying declaration in the hospital, before he succumbed to the injuries. There is consistency in their statements, both stated that they reached the house of Dasin Bai on hearing the voice “save-save”.

13. Further, the appellant has alleged the dying declarations to be impossible to give as the deceased was not in a position to do so, as he had suffered burn injuries. However, this Court has rightly taken the following view in a situation as contended by the learned counsel for the respondent in *Pothakamuri Srinivasulu v. State of A.P.*, (2002) 6 SCC 399, where this Court observed:

“The learned Counsel for the appellant submitted that for

A several reasons the dying declaration cannot be believed.
She submitted that looking to the nature of injuries suffered
B by the deceased possibly she could not have spoken and
must become unconscious instantaneously. However no
such suggestion has been made to any of the witnesses
including the two doctors who respectively conducted the
C medico-legal examination of the victim. On the contrary the
three eye-witnesses have positively stated that the
deceased was speaking when they had met soon after the
incident. the victim had died two days after the incident.
D We cannot in the face of this positive evidence just
assume that the injured must have become unconscious
and speechless because of the injuries and discard on
such assumption the dying declaration deposed to by the
independent witnesses corroborated by the promptly
lodged FIR.”

14. Applying the ratio of the above mentioned cases to
the present case, we find that the counsel for the appellant has
argued on the same lines. Merely because the deceased
E suffered 70 per cent burns, this does not raise an assumption
that he could not have given the oral dying declaration. We are
of the opinion that the High Court was right in believing the oral
dying declaration of the deceased as it did not suffer from any
infirmity. Therefore, the contention of the respondent that the
deceased could not give a dying declaration is devoid of merit.

F 15. We are of the opinion that present case also involves
appreciation of circumstantial evidence and application of
Section 106 of the Evidence Act, which unambiguously lays
down the law with respect to any fact especially within the
G knowledge of a person. In *State of Rajasthan v. Kashi Ram*,
(2006) 12 SCC 254, it was observed by this Court in respect
of Section 106, that when there is any fact especially within the
knowledge of a person, the burden of proving that fact is upon
him. This Court held as follows:

H “The provisions of Section 106 of the Evidence Act itself

are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company with the deceased. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of the facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act.”

16. Further, while dealing with issue of cases resting on circumstantial evidence, where the presence of special knowledge is with the accused, this Court has reiterated time and again that “in a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him by Section 106, that itself provides an additional link in the chain of circumstances proved against him.”

17. The same observation has again been given in *Babu alias Balasubramaniam & Anr. v. State of Tamil Nadu*, (2013) 8 SCC 60, that “appellant-1 could have by virtue of his special knowledge regarding the said facts offered an explanation from which a different inference could have been drawn. Since he has not done so, this circumstance adds up to other circumstances which substantiate the prosecution case.”

18. The appellant/accused in her statement, recorded under Section 313 of Criminal Procedure Code, has not given any explanation as to how the deceased was burnt and she even admits to be unaware of the name of the deceased. This is highly improbable and cast doubt on the innocence of the accused. She is unable to discharge the burden cast upon her by Section 106 of the Evidence Act, as it was within her special knowledge as to how the deceased came into the premises of her house.

A 19. The ground of defense taken by the appellant, that she did not have any motive to kill the deceased, is ill founded and does not break the chain of circumstances. Therefore, when facts are clear it is not necessary to have proof of motive or ill-will to sustain conviction. (See *Mulakh Raj & Ors. v. Staish Kumar & Ors.*, (1992) 3 SCC 43.

C 20. Further, with regard to the aspect of the witnesses, PW-1 and PW-3, who recorded the dying declaration, were neighbours of the accused and hence the Trial Court correctly held that they are not interested witnesses. The findings of the Trial Court also bring to light the fact that they had no animosity with the appellant, and were visiting her house only on the fateful night.

D 21. The Trial Court and the High Court have rightly analysed the evidence of these witnesses and the statements made in the dying declaration referred to above and held the accused guilty. That being so, no interference is called for. This appeal fails and is dismissed. There shall be no order as to costs.

Kalpana K. Tripathy

Appeal dismissed.