[2023] 14 S.C.R. 214 : 2023 INSC 986

CASE DETAILS

HARIPRASAD @ KISHAN SAHU

v.

STATE OF CHHATTISGARH

(Criminal Appeal No. 1182 of 2012)

NOVEMBER 07, 2023

[BELA M. TRIVEDI AND DIPANKAR DATTA, JJ.]

HEADNOTES

Issues for consideration: Whether the delay of about more than one year in registering the FIR could be said to be fatal to the case of prosecution; whether the prosecution proved beyond reasonable doubt that the deceased had died due to administration of poison and the appellant-accused administered the poison in the liquor and made the deceased to drink it on the previous date of his death.

Penal Code, 1860 – s.302 – Allegation of murder by poisoning – Delay in registering FIR – When not fatal:

Held: FIR being only a corroborative piece of evidence and not a substantive piece of evidence, mere delay in registering the FIR could not be held to be a ground adverse to the case of prosecution – In the present case, though the FIR was registered against the appellant on 03.11.2004 in respect of the incident which had taken place on 22.07.2003, a part of investigation had already started on the death of the deceased and on the Merg intimation no.43/03 – The explanation offered by the prosecution that the FIR was not registered as the cause of death was not stated by the Doctor who carried out the post-mortem and the report of Chemical examiner was awaited, seems to be reasonable and acceptable – It was the report of Chemical examination sent by the FSL, after one year, which caused the delay in the registration of the FIR – Thus, the entire delay as such could be attributed to the FSL which took almost one year in giving the report of Chemical examination of Viscera of the deceased – There was no mala fide intention on the part of any of the witnesses or the police not to register the FIR or to delay the registration of FIR – Further, on facts, having regard to the scanty evidence, it is difficult

to hold that the prosecution had proved the four important propositions in case of allegation of murder by poisoning- the accused had a clear motive to administer poison to the deceased; the deceased died of poison said to have been administered; the accused had the poison in his possession and that the accused had an opportunity to administer the poison to the deceased – Findings recorded by the Trial Court as confirmed by the High Court against the appellant for his conviction u/s.302 set aside – Judgment of conviction and order of sentence passed by the Trial Court as confirmed by the High Court, set aside – Appellant acquitted. [Paras 17, 18, 26 and 28]

Evidence Act, 1872 – s.32 – Dying Declaration:

Held: Though a statement made by a person who is dying is made exception to the rule of hearsay and has been made admissible in evidence u/s.32 – It would not be prudent to base conviction, relying upon such dying declaration alone – In the instant case, even if the so-called dying declaration of the deceased is believed, at the most it could be said that the deceased on 22.07.2003 had consumed liquor along with 'HR' and others, and that in the third glass of liquor, 'HR' had mixed some herb, and made the deceased to drink it – There is no evidence to show as to what kind of herb was allegedly mixed by 'HR', and whether such herb was poisonous or not – Chemical examination report of the Senior Scientific Officer, FSL (Ex. P/14) stated that the Viscera of the deceased contained Organophosphorous insecticide and Quinolphos – Though, the Organophosphorous insecticides and Quinolphos are considered to be poisonous substances, nonetheless the Court would be loathe in imputing personal knowledge and conclude that such poisonous substances found in the Viscera of the deceased was the cause of death of the deceased, more so when the said opinion of Chemical analyzer was received after more than one year of sending the Viscera of the deceased to the FSL – In absence of final opinion obtained from any medical expert, on the report of Chemical analyzer as to the cause of death, it could not be said that prosecution had proved beyond reasonable doubt that the cause of death of the deceased was due to administration of poison. [Para 24]

Evidence – FIR – Prompt lodging of – Object:

Held: FIR in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced during the course of the trial. The object of insisting upon prompt lodging of the report to the police in respect of the commission of an offence is to

obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as names of the eye witnesses present at the scene of occurrence – However, the receipt and recording of information report by the police is not a condition precedent to set into motion a criminal investigation – First Information Report u/s.154, Cr.PC, as such could not be treated as a substantive piece of evidence – It can only be used to corroborate or contradict the informant's evidence in the Court – Code of Criminal Procedure, 1973 – s.154. [Para 9]

Criminal Law – Delay in registration of FIR, not by itself sufficient to draw an adverse inference against the prosecution:

Held: The delay in lodging an FIR by itself cannot be regarded as the sufficient ground to draw an adverse inference against the prosecution case, nor could it be treated as fatal to the case of prosecution – The Court has to ascertain the causes for the delay, having regard to the facts and circumstances of the case – If the causes are not attributable to any effort to concoct a version, mere delay by itself would not be fatal to the case of prosecution. [Para 10]

Constitution of India – Article 136 – Findings recorded by courts below afflicted with infirmities – Exercise of jurisdiction u/Article 136:

Held: This Court should be slow in reappreciating the evidence and in upsetting the findings recorded by the two courts below, particularly while exercising the jurisdiction under Article 136, however such exercise of jurisdiction is not prohibited, when the Court finds that such findings are afflicted with ex-facie infirmities. [Para 27]

LISTS OF CITATIONS AND OTHER REFERENCES

Sharad Birdhichand Sarda vs. State of Maharashtra (1984) 4 SCC 116: [1984] 4 SCR 88; *Ravinder Kumar and Another Vs. State of Punjab* 2001 (7) SCC 690: [2001] 7 SCR 463 – relied on.

Thulia Kali vs. The State of Tamil Nadu 1972 (3) SCC 393: [1972] 3 SCR 622; *Apren Joseph alias current Kunjukunju & Ors. Vs. State of Kerela* 1973 (3) SCC 114: [1973] 2 SCR 16 – referred to.

The King Emperor vs. Khawaja Nazir Ahmad AIR 1945 PC 18 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1182 of 2012.

From the Judgment and Order dated 09.02.2011 of the High Court of Chhattisgarh at Bilaspur in CRLA No.324 of 2006.

Appearances:

Rajesh Pandey, Sr. Adv., Abishek Pandey, Mahesh Pandey, Ms. Nishi Prabha Singh, Ms. Mridula Ray Bharadwaj, Advs. for the Appellant.

Ms. Asmita Singh, Gautam Narayan, Harshit Goel, Siddhant Singh, Advs. for the Respondent.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

BELA M. TRIVEDI, J.

1. The Appellant-accused by way of present appeal has assailed the Judgment and Order dated 09.02.2011 passed by the High Court of Chhattisgarh at Bilaspur, in Criminal Appeal No.324 of 2006, whereby the High Court has confirmed the judgment of conviction and order of sentence dated 09.03.2006 passed by the Special Judge, (Atrocities), Bilaspur, Chhattisgarh (hereinafter referred to as the 'Trial Court') in Special Criminal Case No.19 of 2005. The Trial Court in the said case while acquitting the appellant-accused from the charge under Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (hereinafter referred to as the SC/ST Act), had convicted him for the offence under Section 302 of IPC and sentenced him to undergo imprisonment for life and pay a fine of Rs.1,000/-, in default thereof, to further undergo Rigorous Imprisonment for one year.

2. The case of the prosecution as unfolded by it was that on 22.07.2003, during the evening hours, Bisahu Singh (the deceased) had gone to the forest for collecting woods, however he did not come back in the night. The next

day morning his wife Ganeshi Bai saw him lying in the Verandah of his house in a semi-conscious state. At that time, some wheezing sound, and pungent smell of liquor was coming from his mouth. Ganeshi Bai and her daughter Anita tried to wake him up, but in his slurred speech, he was trying to say that while he was going to the forest, Hariprasad (the appellant-accused) called him at his home and made him to drink two glasses of liquor and thereafter Hariprasad mixed some jadi-buti (herb) in the third glass of liquor, and made him to drink the third glass. Ganeshi Bai called her neighbours and took him to CIMS Bilaspur, as the health of Bisahu Singh was deteriorating. During the course of treatment, Bisahu Singh died on 23.07.2003 at about 03.30 P.M. The death was intimated to the police and Merg – Intimation (Ex. P/4) was prepared. The dead body of Bisahu Singh was sent for autopsy to CIMS Bilaspur. Dr. A.K. Shukla conducted the Post-mortem on 24.07.2003 and recorded in the Post-mortem Report (Ex. P/13) as under: -

> "Cause of death could be decided after Chemical examination of Viscera preserved."

3. After the receipt of the report of Chemical examiner (Ex. P/14), the FIR was registered on 03.11.2004. (Ex. P/11)

4. During the course of trial, the prosecution had examined nineteen witnesses and led the documentary evidence. The Appellant-accused who was examined under Section 313 of Cr.P.C. denied the allegations levelled against him and pleaded innocence. He also examined DW-1 Pardesi Ram Gond, who had deposed that from 19.07.2003 to 23.07.2003 appellant was there in his house at Raipur. The Trial Court after appreciating the evidence on record, convicted and sentenced the appellant as stated hereinabove, which has been confirmed by the High Court.

5. The learned Counsel for the Appellant placing heavy reliance on the decision of ***Sharad Birdhichand Sarda vs. State of Maharashtra***[1] submitted that in case of the alleged death due to poisoning, the prosecution was required to prove that there was clear motive of the accused to administer the poison to the deceased; that the accused had the poison in his possession and that he had the opportunity to administer the poison to the deceased.

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1 **(1984) 4 SCC 116**

However, in the instant case none of these circumstances were proved by the prosecution. He further submitted that there was gross delay of one year occurred in filing the FIR, in as much as the alleged incident had taken place on 22.07.2003, however the FIR was lodged after more than one year i.e. on 03.11.2004. The so-called dying declarations of the deceased before the family members were not believable. The most important incriminating evidence i.e. FSL report (Ex. P/14) was not brought to the notice of the appellant when he was examined under Section 313 of Cr.P.C. According to him the entire story put forth by the prosecution was not only highly improbable but was not proved beyond reasonable doubt.

6. However, the learned Counsel for the Respondent State vehemently submitted that both the courts below having recorded the findings of conviction against the appellant for the offence under Section 302 and imposed the sentence of life imprisonment accordingly, this Court in exercise of the jurisdiction under Article 136 of the Constitution should not interfere with the same. He further submitted the delay caused in obtaining the report of chemical analyzer had delayed the lodging of the FIR, which explanation has been accepted by the Trial Court as well as by the High Court, and hence the same should not be held to be fatal to the case of prosecution, more particularly when all the witnesses had duly supported the case of prosecution.

7. Having regard to the submissions made by the learned counsel for the parties and having thoroughly gone through the oral as well as documentary evidence on record, in our opinion three broad questions arise for determination before this Court:

(i) Whether the delay of about more than one year occurred in registering the FIR could be said to be fatal to the case of prosecution?

(ii) Whether the prosecution had proved beyond reasonable doubt that the deceased had died due to administration of poison?

(iii) Whether the prosecution had proved beyond reasonable doubt that the appellant accused had administered the poison in the liquor and made the deceased to drink it on 22.07.2003 i.e., on the previous date of his death?

8. So far as the first issue with regard to the delay occurred in registering the FIR is concerned, it is not disputed that though the incident in question had taken place on 22.07.2003, and the deceased Bisahu Singh had expired on 23.07.2003, the FIR (Ex. P/11) was registered after more than one year i.e., on 03.11.2004 against the appellant-accused alleging offence under Section 302 of IPC.

9. It cannot be gainsaid that the First Information Report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced during the course of the trial. The object of insisting upon prompt lodging of the report to the police in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as names of the eye witnesses present at the scene of occurrence[2]. It is also an equally settled legal position that the receipt and recording of information report by the police is not a condition precedent to set into motion a criminal investigation[3]. The First Information Report under Section 154 of Cr.PC, as such could not be treated as a substantive piece of evidence. It can only be used to corroborate or contradict the informant's evidence in the Court. As held by three-Judge Bench of this Court[4], FIR is very useful if recorded before there is time and opportunity to embellish, or before the informant's memory fades. Undue or unreasonable delay in lodging the FIR, therefore, may give rise to suspicion which put the Court on guard to look for the possible motive and the explanation for the delay and consider its effect on the trustworthiness or otherwise of the prosecution version.

10. Of course, the delay in lodging an FIR by itself cannot be regarded as the sufficient ground to draw an adverse inference against the prosecution case, nor could it be treated as fatal to the case of prosecution. The Court has to ascertain the causes for the delay, having regard to the facts and circumstances of the case. If the causes are not attributable to any effort

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2 **Thulia Kali vs. The State of Tamil Nadu; 1972 (3) SCC 393**

3 **The King Emperor vs. Khawaja Nazir Ahmad; AIR 1945 PC 18**

4 **Apren Joseph alias current Kunjukunju & Ors. Vs. State of Kerela; 1973 (3) SCC 114**

to concoct a version, mere delay by itself would not be fatal to the case of prosecution.

11. In ***Ravinder Kumar and Another Vs. State of Punjab***[5], it has been held that: -

> "13. The attack on prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the criminal cases that there would be some delay in furnishing the first information to the police. It has to be remembered that law has not fixed any time for lodging the FIR. Hence a delayed FIR is not illegal. Of course a prompt and immediate lodging of the FIR is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to any prosecution case. It cannot be overlooked that even a promptly lodged FIR is not an unreserved guarantee for the genuineness of the version incorporated therein.
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> 14.When there is criticism on the ground that FIR in a case was delayed the court has to look at the reason why there was such a delay. There can be a variety of genuine causes for FIR lodgment to get delayed. Rural people might be ignorant of the need for informing the police of a crime without any lapse of time. This kind of unconversantness is not too uncommon among urban people also. They might not immediately think of going to the police station. Another possibility is due to lack of adequate transport facilities for the informers to reach the police station. The third, which is a quite common bearing, is that the kith and kin of the deceased might take some appreciable time to regain a certain level of tranquility of mind or sedativeness of temper for moving to the police station for the purpose of furnishing the requisite information. Yet another cause is, the persons who are supposed to give such information themselves could be so physically

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5 **2001 (7) SCC 690**

impaired that the police had to reach them on getting some nebulous information about the incident.

15. We are not providing an exhaustive catalogue of instances which could cause delay in lodging the FIR. Our effort is to try to point out that the stale demand made in the criminal courts to treat the FIR vitiated merely on the ground of delay in its lodgment cannot be approved as a legal corollary. In any case, where there is delay in making the FIR the court is to look at the causes for it and if such causes are not attributable to any effort to concoct a version no consequence shall be attached to the mere delay in lodging the FIR. (Vide Zahoor v. State of U.P. [1991 Supp (1) SCC 372 : 1991 SCC (Cri) 678] , Tara Singh v. State of Punjab [1991 Supp (1) SCC 536 : 1991 SCC (Cri) 710] and Jamna v. State of U.P. [1994 Supp (1) SCC 185 : 1994 SCC (Cri) 348]) In Tara Singh [1991 Supp (1) SCC 536 : 1991 SCC (Cri) 710] the Court made the following observations: (SCC p. 541, para 4)

> "4. It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report."

12. Keeping in view the aforestated settled legal position, let us examine as to whether the delay of more than one year in the registration of the FIR was fatal to the case of prosecution or the prosecution had sufficiently explained the said delay?

13. As transpiring from the record, the deceased Bisahu Singh was the husband of PW-2 Ganeshi Bai and father of PW-3 Anita Porte. They both had stated in their respective evidence about the health condition of Bisahu Singh, when he was found lying in the Verandah of their house in the morning hours on 23.07.2003. As stated by the PW-6 Dr. Bhojraj

Hotchandani, on 23.07.2003 at 01.25 P.M. Bisahu Singh was brought to the CIMS Hospital, Bilaspur. As per the evidence of PW-8 Dr. Anita Bambethwar, Bisahu Singh was brought to her for treatment, however he died at 3.30 PM on 23.07.2003. The said Dr. Anita has stated that she had given the information about the death to the police station City Kotwali, as per Ex. P/3. The PW-9 Kedarnath Kaushik who was the ward boy in CIMS Hospital, Bilaspur had given the Merg Intimation (before the police station City Kotwali) and PW-10 Mangal Das who was posted as Head Constable in City Kotwali, Bilaspur had sent the dead body of the deceased-Bisahu Singh along with the memorandum to CIMS Hospital, Bilaspur for post-mortem on 24.06.2003. The PW-14 Basant Kumar Singh who was posted as Sub-Inspector in police station City Kotwali, Bilaspur had drawn the proceeding of the Inquest panchnama (Ex. P/9), and had sent the dead body for post-mortem along with the memorandum (Ex. P/5A).

14. PW-18 Dr. A.K. Shukla working at CIMS Hospital, Bilaspur had carried out the post-mortem at about 12.50 hrs. on 24.07.2003. After carrying out the external and internal examination of the dead body of Bisahu Singh, he had opined (Ex. P/13) that "Cause of death could be decided after Chemical examination of the Viscera preserved. Time since death, less than 24 hours approx."

15. It appears that the Viscera of the deceased was collected and sealed in two separate boxes by the PW-18 on 24.07.2003 and were sent for chemical examination to the Forensic Science Laboratory, Chhattisgarh, which received the same on 18.09.2003. Thereafter, the Senior Scientific Officer, FSL, Raipur submitted the following Test result, vide the letter dated 10.08.2004 (Ex. P/14):

TEST RESULT

"Exhibit A and B contain Organophosphorus pesticide and Quinolphos.

Exhibit C does not contain any chemical poison."

16. After the receipt of the afore-stated report from the Senior Scientific Officer, the PW-15 Shyam Kori, SHO Bilha, District Bilaspur registered the FIR being Crime No. 175/04 at police station Ratanpur on 03.11.2004 against the appellant-accused for the offence under Section 302 of IPC. He

has stated in his evidence that the said FIR was registered on the basis of the evidence collected during the investigation in the Merg No. 43/03 under Section 174 of Cr.PC at police station Ratanpur, and thereafter, he recorded the statements of witnesses. On the completion of the investigation the chargesheet was filed by PW-19 I.H. Khan, SDO(P), Bilaspur in the Court.

17. From the afore-stated evidence on record, it is discernible that though the FIR was registered against the appellant on 03.11.2004 in respect of the incident which had taken place on 22.07.2003, a part of investigation had already started on the death of Bisahu Singh and on the Merg intimation no.43/03. Apparently, one may feel that there was a delay of more than one year in registering the FIR, however the chain of circumstances which took place during the said one year clearly suggests that the deceased was taken to the CIMS Hospital, Bilaspur immediately on 23.07.2003 in the morning, and he expired at about 3.30 PM on the same day. His post-mortem was carried out on the very next day i.e., 24.07.2003 and the samples of Viscera of the deceased collected by Dr. A.K. Shukla, were sent for Chemical examination to the FSL, Raipur, on 18.09.2003. It was the report of Chemical examination sent by the FSL Raipur, after one year, which caused the delay in the registration of the FIR. Thus, the entire delay as such could be attributed to the FSL, Raipur, which took almost one year in giving the report of Chemical examination of Viscera of the deceased. As such, there is no allegation on concoction of false version made against the prosecution.

18. It is true that the PW-2 Ganeshi Bai, wife of the deceased right from the beginning having alleged that her husband Bisahu Singh when was found lying in the verandah of her house in the morning hours on 22.07.2003, had told her in presence of her daughter PW-2 Anita Porte, PW-7 Kotwar Bhagwati, and other witnesses that the appellant-accused Hariprasad had called him at his place on the previous day evening and had mixed jadi-buti in the liquor, and the appellant made him to drink it, because of which the health of Bisahu Singh had deteriorated, she or any other neighbours/ relatives could have lodged a complaint against the appellant-accused on that day itself. It is also true that when Bisahu Singh was admitted and treated in the hospital with the history of alleged administration of poison, and when he subsequently expired on the same day at 3.30 P.M., which

required post-mortem to be carried out, the concerned SHO in the police station also could have registered the FIR instead of registering the case with Merg number. However, the explanation offered by the prosecution that the FIR was not registered as the cause of death was not stated by the Doctor who carried out the post-mortem and the report of Chemical examiner was awaited, seems to be reasonable and acceptable. It appears that there was no *mala fide* intention on the part of any of the witnesses or the police not to register the FIR or to delay the registration of FIR. It was only when the report of Chemical examiner was received, the FIR was registered on 03.11.2004. We are, therefore, inclined to hold that the FIR being only a corroborative piece of evidence and not a substantive piece of evidence, mere delay in registering the FIR could not be held to be a ground adverse to the case of prosecution.

19. This takes us to the next issue as to whether the prosecution had proved beyond reasonable doubt that the deceased had died due to the administration of poison and that administration was by the appellant-accused.

20. Before delving into the evidence adduced by the prosecution, it may be noted that this Court way back in 1984, in ***Sharad BirdhiChand Sarda vs. State of Maharashtra*** (supra), which has been followed in catena of decisions, had observed that in the case of murder by poison, the prosecution must prove following four circumstances: -

> "(1) there is a clear motive for an accused to administer poison to the deceased,
>
> (2) that the deceased died of poison said to have been administered,
>
> (3) that the accused had the poison in his possession,
>
> (4) that he had an opportunity to administer the poison to the deceased."

21. Hence, let us see whether the prosecution had proved the said four circumstances in the instant case. So far as the motive part is concerned, there is hardly any evidence adduced by the prosecution to show that there was any motive for the appellant to administer poison to the deceased. Though, the PW-2 Ganeshi Bai and PW-3 her daughter Anita had stated that there was some land dispute going on between the accused and the deceased, except their bare version there was no other evidence produced

to substantiate that allegation. That apart, if there was enmity between the accused and the deceased, the deceased would not have gone to the house of the accused for consuming liquor.

22. The second circumstance that the deceased died of poison also does not seem to have been proved by the prosecution. The PW-1 Dr. Sudesh Verma, who was called by the wife of the deceased Bisahu Singh when he was found lying in the Verandah on 23.07.2003, had stated that the patient i.e. Bisahu Singh was in semi-conscious state of mind and was not in a position to speak properly. Wheezing sound and pungent smell of liquor was coming from his mouth. According to him, Bisahu Singh told him that he consumed small quantity of liquor along with some of his mates. PW-2 Ganeshi Bai, wife of the deceased Bisahu Singh had stated that in the evening hours of 22.07.2003, her husband Bisahu had gone to the forest to bring woods, however he did not come back in the night. At 7 O'clock on the next day morning, she saw that Bisahu was sleeping in the Verandah and some wheezing sound was coming from his neck. She and her daughter Anita Bai tried to wake him up but his condition was very serious. He spoke in a low voice to call the Kotwar. The Kotwar having come, her husband told that Hari Ram had given two glasses of liquor to him, and then he mixed something in the third glass. He further told them that upon his asking, Hari Ram told him that he was mixing medicine to subside the effect of the liquor. PW-3 Ms. Anita Porte, the daughter of the deceased also stated the same version as stated by her mother. PW-7, the Kotwar Bhagwati also supported the version of PW-2 Ganeshi Bai. Similarly, PW-4 Ms. Sukwara Bai, PW-5 Rajesh Kumar, younger brother of the deceased also stated the same thing as stated by the PW-2 and others.

23. Having regard to the said evidence, it appears that though all the witnesses have stated the same story, none of the witnesses had any personal knowledge about the alleged incident and about the cause of the deteriorating health condition of Bisahu Singh. Even if the said version of the deceased before his wife, his daughter, his brother, the Kotwar and others is treated as his dying declaration, it would be very risky to convict the accused on such a weak piece of evidence.

24. As per the settled law, though a statement made by a person who is dying is made exception to the rule of hearsay and has been made admissible in evidence under Section 32 of the Evidence Act, it would not

be prudent to base conviction, relying upon such dying declaration alone. In the instant case, even if that so-called dying declaration of the deceased is believed, at the most it could be said that the deceased on 22.07.2003 had consumed liquor along with Hari Ram and others, and that in the third glass of liquor, Hari Ram had mixed some herb, and made the deceased to drink it. It may be noted that there is no evidence on record to show as to what kind of herb was allegedly mixed by Hari Ram, and whether such herb was poisonous or not. The PW-18 Dr. A.K. Shukla who carried out the post-mortem of the deceased on 24.07.2003 had also not given any opinion on the cause of death. He had stated in the Post-mortem report (Ex. P/13) that the cause of death could be decided only after the Chemical examination of the preserved parts was received. The Chemical examination report of the Senior Scientific Officer, FSL Raipur (Ex. P/14) stated that the Viscera of the deceased contained Organophosphorous insecticide and Quinolphos. After the receipt of the said report of the Chemical examiner, the investigating officer had failed to obtain any opinion either from the doctor who carried out the post-mortem or from any other doctor about the actual cause of death of the deceased. There is nothing on record to suggest about the effect of mixture of liquor with Organophosphorous insecticide and Quinolphos, the substances found contained in the Viscera of the deceased. Under the circumstances, the Court is of the opinion that the prosecution had failed to conclusively prove that the substances found in the Viscera of the deceased were poisonous and the final cause of death of the deceased was due to the administration of poison to the deceased. Though it may be a matter of common knowledge that the Organophosphorous insecticides and Quinolphos are considered to be poisonous substances, nonetheless the Court would be loathe in imputing personal knowledge and conclude that such poisonous substances found in the Viscera of the deceased was the cause of death of the deceased, more so when the said opinion of Chemical analyzer was received after more than one year of sending the Viscera of the deceased to the FSL, Raipur. In absence of final opinion obtained from any medical expert, on the report of Chemical analyzer as to the cause of death, it could not be said that prosecution had proved beyond reasonable doubt that the cause of death of the deceased was due to administration of poison.

25. If the versions of the PW-2 Ganeshi Bai and Others, who were present at the house of the deceased in the morning hours on 23.07.2003 are believed, it may be presumed that the deceased Bisahu Singh had told them

that the appellant Hari Prasad had made him to drink two glasses of liquor and in the third glass he had mixed some jadi-buti i.e. herb to subside the effect of liquor, however the prosecution had failed to bring on record as to which jadi-buti was mixed in the liquor and had failed to show whether the said jadi-buti or herb was poisonous. Of course, since the investigation had started after one year of the alleged incident, there was no possibility of any such jadi-buti or substance being found from the house of the accused. A faint attempt was made by the prosecution by examining PW-12 Assistant Sub Inspector, Rama Pratap Singh who had stated that an information was sought from CIMS, Bilaspur through the memorandum (Ex. P/7), whether the jadi-buti would contain Organophosphorous Quinolphos, however he did not say anything further whether any such report was received from CIMS, Bilaspur or not. The PW-18 Dr. A.K. Shukla had stated in his evidence that an inquiry was made by the concerned SHO on one insecticide- Quinolphos, manufactured by Hikal limited, G.I.D.C. Bharuch, Gujarat, marketed by S. India Limited Mumbai, whether such insecticides were found in the jadi-buti or not, but he opined that he did not know whether such poison would be contained in the herbs or not. He also stated that he did not know whether mixing of such herbs in any solution would result into Quinolphos.

26. Having regard to such scanty evidence, it is difficult to hold that the prosecution had proved the four important propositions laid down by this Court in case of allegation of murder by poisoning namely (1) the accused had a clear motive to administer poison to the deceased; (2) the deceased died of poison said to have been administered; (3) the accused had the poison in his possession and that (4) the accused had an opportunity to administer the poison to the deceased. It is also pertinent to note that the Chemical examination report (Ex. P/14) though was an incriminating piece of evidence, was not brought to the notice of the appellant during the course of his examination under Section 313 of Cr.P.C. All these circumstances put together, have made the case of prosecution very vulnerable.

27. It cannot be gainsaid that this Court should be slow in reappreciating the evidence and in upsetting the findings recorded by the two courts below, particularly while exercising the jurisdiction under Article 136, however such exercise of jurisdiction is not prohibited, when the Court finds that such findings are afflicted with *ex-facie* infirmities.

28. In that view of the matter, the findings recorded by the Trial Court as confirmed by the High Court against the appellant-accused for his conviction under Section 302 IPC deserve to be set aside and the appellant deserves to be set free. The Judgment of Conviction and Order of Sentence passed by the Trial Court, as confirmed by the High Court are set aside. The appellant is acquitted from the charges levelled against him. Since the appellant is on bail, his bail bonds shall stand cancelled forthwith.

29. The Appeal stands allowed accordingly.

Headnotes prepared by:
Divya Pandey

Appeal allowed.