

Madhya Pradesh High Court
Omkar vs State Of M.P. on 5 May, 2022
Author: Rajeev Kumar Shrivastava
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High Court of Madhya Pradesh
Bench at Gwalior

DB:- Hon'ble Shri Justice G.S.Ahluwalia &
Hon'ble Shri Justice Rajeev Kumar Shrivastava

CRA 646 of 2011
Omkar and Others
Vs.
State of MP

Ms. Chitra Saxena with Shri Rajiv Jain, Counsel for the
appellants.

Shri A. K. Nirankari, Counsel for the respondent/State.

Reserved on : 26-04-2022
Whether approved for reporting : Yes/.....

JUDGMENT

(Delivered on 05/05/2022) Per Rajeev Kumar Shrivastava, J:-.

The present Criminal Appeal under Section 374 of CrPC has been preferred against the judgment dated 10-06-2011 passed by First Additional Sessions Judge, Vidisha (MP) in Sessions Trial No.03/2010, convicting and sentencing the appellants to undergo for Life Imprisonment u/S 302 of IPC and fine of Rs.5,000/- each and in default of payment of fine, they shall further to undergo for Five Months additional rigorous imprisonment.

(2) According to prosecution case, on 18-10-2009 at around 10:00 in the night on receiving an information, Head Constable Bharat Singh Thakur (PW3) who was posted at Police Station Kurwai, District Vidisha, reached Village Sarkhandi and on the basis of information given by injured Smt. Rambai, a Dehati Nalishi (Ex.P.6) was recorded at 0/2009 on the spot to the effect that an evil term was going with Smt. Rambai with her neighbour Pratap Kushwah since one year. At around 7:00 pm, Smt. Rambai along with her daughter-in-law Shakunbai (PW7) had returned home after cutting soyabean crops. In front of the door of her house, Omkar, Pooran, Pratap, Chintu, Hukum & Kallu came there and hurled abuses. Pooran took out a plastic container and poured kerosene on her and Omkar set her on ablaze by matchstick. Chintoo and Pooran both caught hold of her hands and legs and the saree of injured Smt. Rambai became caught fire. On hearing her weeping, her daughter-in-law Rupabai (PW11) and his son Vinod (PW8) came there for rescue. Skin of her face, chest, abdomen, thighs and hands were on fire. Her son and daughter-in-law Rupabai put on clothes and water for save of her life. On the basis of said Dehati Nalishi Ex.P6 recorded by Head Constable (Writer) Bharat Singh Thakur (PW3), a Crime was registered at PS Kurwai. Injured Smt.Rambai was

sent for medical examination to CHC Kurwai. Dr.PK Jain (PW6) conducted MLC of Smt. Rambai vide Ex.8-A. On the basis of Dehati Nalishi, Head Constable Bahadur Singh Yadav (PW13) of PS Kurwai recorded an FIR Ex.P21 at Crime No.247 of 2009 for offences under Sections 147, 148, 307 of IPC. The IO R.K. Gautam (PW12) during investigation, prepared site plan Ex.P12 and recorded the statements of witnesses. Incriminating articles like burnt clothes, matchbox and a five-liter plastic container were seized vide seizure memo Ex.P9 on the basis of memorandum of the witnesses Bhupendra Singh (PW4) and Bhagwan Singh (PW5). Pratap Singh, Omkar, Hukum Singh, Prahlad Singh, Pooran and Chintoo alias Maharaj Singh were arrested vide arrest memo Ex.P14 to Ex.P19. Seized articles were sent to FSL Sagar vide Ex.P20. Injured Smt. Rambai was admitted in Burn Ward, Hamadia Hospital, Bhopal where on 20-10-2009 at around 03:15 in the night, she died and information regarding the death of deceased was given to Police Chowki Kohefiza, Hamidia Hospital, Bhopal on the basis of which, a merg No.495 of 2009 u/S 174 of CrPC was recorded by Head Constable Abdul Harish (PW2) who, thereafter prepared safina form of the witnesses Narayan (PW1), Vinod (PW4) and Udam Singh (PW9) vide Ex.P1 and Naksha Panchnama of dead body of deceased Smt. Rambai was prepared vide Ex.P2 and thereafter, her dead body was sent for postmortem where the Senior Forensic Specialist, Medico-legal Department, Bhopal, namely, Dr.Ashok Sharma (PW10) had conducted the postmortem of deceased. Postmortem report is Ex.P13 and thereafter, the corpse was handed over to Narayan, Vinod & Udam Singh on Supurdignama vide Ex.P3. On receiving Merg intimation No.495 of 2009, Suresh Kumar Sharma who was posted as Head Constable in PS Kurwai recorded original Merg No.06 of 2009 on 29-10-2009. During investigation, medical examination of Harisingh (husband of deceased Smt. Rambai) was also done by Dr.P.K.Jain (PW6) vide MLC report Ex.P11. After completion of investigation and other formalities, the police filed a charge sheet before Court of JMFC, Kurwai under Sections 147, 148, 302 of IPC and the case was committed to the Sessions Court for trial and accused denied charges against them under Sections 148, 302, 149 of IPC and claimed their trial.

(3) Prosecution, in support of its case, has examined as many as thirteen witnesses, namely, Narayan (PW1), Abdul Harish (PW2), Bharat Singh Thakur (PW3), Bhupendra Singh (PW4), Bhagwan Singh (PW5), Dr. PK Jain (PW6), Shakaun Bai (PW7), Vinod (PW8), Udam Singh (PW9), Dr. Ashok Sharma (PW10), Rupabai (PW11), Ram Kishore Gautam (PW12) and Bahadur Singh (PW13).

(4) The statements of accused were recorded under Section 313 CrPC by the Trial Court and they denied the prosecution and stated that they have been falsely implicated due to previous enmity and on the date of incident, they were not present on the place of occurrence. The appellants accused in their defence examined only one witness Randhir Singh as DW1. (5) The Trial Court, after appreciation of evidence available on record, convicted and sentenced appellants, as indicated above in para 1 of this judgment.

(6) The grounds of appeal raised are that the judgment of conviction and sentence passed by trial Court is illegal. The trial Court has erred in analyzing prosecution evidence. It is further contended that trial Court has erred in convicting the appellants only on the basis of evidence of interested witnesses and has not considered contradictions and omissions therein. The trial Court has committed an error in considering police statement of deceased Smt. Rambai as Dying Declaration

vide Ex.P7 and Dehati Nalishi Ex.P6 and has wrongly convicted and sentenced appellants without there being any credible evidence available against them. There are contradictions and omissions in the evidence of Shakunbai (PW7) and Vinod (PW8) who are alleged to be eye-witnesses of the incident. No clarification was given by prosecution regarding injuries caused to appellants by Vinod (PW8) and his father Harisingh which creates prosecution story doubtful. The husband of deceased Harisingh committed suicide by setting him on ablaze in order to escape from criminal liability and this aspect has not considered by trial Court while passing the impugned judgment. There is no clinching and cogent evidence to directly connect appellants with alleged offence. Therefore, prayed for setting aside the impugned judgment of conviction and sentence.

(7) Per contra, counsel for the State supported impugned judgment and submitted that prosecution has proved its case beyond reasonable doubt. The Trial Court has based its judgment mainly relying upon the statement of deceased as "Oral Dying Declaration" and Dehati Nalishi recorded by the deceased and the eye-witnesses of the incident and, therefore, the same is very well-proved and is well-connected with other evidence available on record. The Trial Court after examining prosecution evidence as well as defence evidence has come to the conclusion that accused have committed murder of the deceased by setting her on ablaze and, therefore, has rightly convicted and sentenced the appellants for the offence in question. Hence, no case is made out for interference and the appeal filed by appellants deserves dismissal.

(8) Narayan (PW1) in his deposition stated that he had gone to Hamadia Hospital, Bhopal after receiving information regarding the death of deceased Rambai where Lash Panchnama Ex.P2 was prepared and the dead body of the deceased was handed over on Supurdignama vide Ex.P3.

(9) Abdul Harish (PW2), in his deposition stated that on 22-10-2009, he was posted as Head Constable in Police Chowki Kohefiza, Hamidia Hospital. This witness further deposed that he had recorded Merg vide Ex.P.4 after receiving the information from Telephone Attender on behalf of Dr.R.K.Ahirwar of Hamadia Hospital that the deceased Smt.Rambai died due to burn injuries and her dead body has been kept in mortuary. Thereafter, he had summoned relatives of deceased, namely, Vinod, Ramu, Udham Singh, Narayan and Kalyan Singh vide safina form Ex.P1 and in the presence of Panch witnesses, he had also prepared Lash Panchnama Ex.P2. For conduction of postmortem, dead body of the deceased was handed over to the son and husband of deceased Vinod (PW8) and Harisingh on Supurdignama through requisition form vide Ex.P5.

(10) Bharat Singh (PW3) in his deposition stated that on the basis of information furnished, he had recorded Dehati Nalishi of the deceased Ex.P6 at 09/2009 for offences under Sections 147, 148, 307 of IPC against accused Omkar, Pooran, Pratap, Chintu, Hukum & Kallu, all residents of Village Sarkhandi and thereafter, the statement of deceased was recorded vide Ex.P7 on the basis of disclosure of the deceased and thereafter, he had sent Smt. Rambai to PHC, Kurwai for medical examination vide requisition form Ex.P8. This witness in his cross-examination admitted that Harisingh, husband of deceased died by taking sulphur tablet after three months of the death of deceased Smt. Rambai and after recording Dehati Nalishi of deceased. This witness further denied that he has falsely implicated accused on the say of son of deceased Vinod (PW8).

(11) Bhupendra Singh (PW4) and Bhagwan Singh (PW5) have not proved seizure memo Ex.P9 as in their evidence both of them deposed that the said seizure memo was prepared in their absence at the school situated near the house of deceased. Both these witnesses in their cross-examination deposed that there is a good relation of them with accused.

(12) Dr. P.K.Jain (PW6) in his deposition stated that on 18-10- 2009 he was posted as Medical Officer in PHC, Kurwai. Constable Bharat Singh and Kishor Singh brought Smt. Rambai in burnt condition to hospital through medical requisition form Ex.P8 wherein, Smt. Rambai narrated that accused Pooran and Omkar set her on ablaze. At the time of her medical examination, face, both upper forearms, both thighs, chest, abdomen and back of Smt. Rambai were found in burnt. According to the opinion of doctor, burnt was 70% caused by kerosene, may be dangerous to life. The MLC report is Ex.P8A. This witness in para 3 of his evidence admitted that he had also medically examined Harisingh, husband of Smt. Rambai on 30-10-2009 and the burn injuries sustained by Harisingh were within 12 days and the same were simple in nature. His MLC report is Ex.P11. This witness in para 5 of his cross-examination admitted that Smt. Rambai did not disclose either the name of village & fathers' name of Pooran and Omkar or their age. This witness in his cross-examination admitted that he could not mention as to whether burn injuries sustained by deceased Smt. Rambai, was superficial or deep. (13) Shakunbai (PW7) who is the daughter-in-law of deceased Rambai, in para 3 of her evidence deposed that on the date of incident, accused persons hurled abuses by saying that if anybody opposes, they will set on ablaze. Her mother-in-law Rambai told "how do you fire, look at it! Accused Pratap and Omkar told to bring container and thereafter, they set Smt. Rambai on ablaze and fled away from the spot. This witness in para 16 of her cross-examination admitted that Pooran and Pratap both set Smt. Rambai on ablaze and this fact has been narrated by her in her Police Diary Statement Ex.D1 that she had heard this fact while her mother-in-law was telling to police that both accused Pooran and Pratap set her on ablaze. In paragraph 25 of her cross- examination, this witness admitted that a case filed by accused Chintu alias Maharaj Singh is pending against her husband Vinod, Ramu and Bablu regarding commission of "marpeet" and has falsely implicated to her husband Vinod. On that account, there was a previous enmity of accused Chintu alias Maharaj Singh with her husband and brother-in-law (Devar) and all accused are of one family. This witness in para 26 of her cross- examination denied that she has falsely implicated accused persons in order to save her father-in-law Harisingh and her husband Vinod.

(14) Vinod (PW8), the son of deceased Rambai in his deposition stated that on the date of incident, accused persons were hurling abuses him and his family members. He had objected and his mother Smt. Rambai had also objected to it. In para 2 of his evidence, this witness further deposed that accused Pooran poured kerosene on his mother and accused Omkar set her on ablaze. This fact had been disclosed by him to the police and he could not tell as to why police did not mention this fact in his Police Diary Statement Ex.D2. This witness further deposed that he had telephoned to Police Kurwai and on reaching police, he had brought his mother Smt. Rambai to Kurwai Hospital from where his mother was referred to Hamadia Hospital, Bhopal and after two-three days during treatment she died. (15) Dr. Ashok Sharma (PW10) in his evidence deposed that on 22-10-2009 he had conducted the postmortem of deceased Smt. Rambai and found burn injuries on her face, neck, chest, nipple, abdomen, both upper forearms, back, both thighs at 2-3 degree. According to opinion

of doctor, the death of deceased was due to cardio-respiratory failure as a result of burn injuries. Duration of death was within 24 hours. This witness in his cross-examination admitted that at the time of postmortem, he was unable to clarify as to whether the death of deceased was either suicidal, homicidal or accidental.

(16) Rupabai (PW11) who is the daughter-in-law of deceased Smt. Rambai, in her evidence deposed that on the date of incident, the accused persons hurled abuses to their family members and threatened her mother-in-law for setting her on fire. This witness in her cross-examination deposed that when she came out from the house, she saw that her mother-in-law was in burnt condition.

(17) Ram Kishore Gautam (PW12) who was posted as SHO at PS Kurwai on 18-10-2009 in his evidence deposed that in connection with Crime No.247 of 2009 registered for offences under Sections 147, 148, 307 of IPC, he had prepared a spot map on the basis of memorandum of witness Shakunbai (PW7) vide Ex.P12. Burnt clothes, a matchbox and a plastic container were seized in presence of witnesses Bhagwan Singh and Bhupendra Singh vide seizure memo Ex.P9 and the said articles were sent to FSL vide Ex.P20. Statements of witnesses Rupabai, Harisingh, Preetam Adiwasi, Vinod and Sakunbai were also recorded. On 03-11-2009, formal arrest of accused Pooran and Chintu were made vide Ex.P18 and Ex.P19 and rest of the accused were also made vide arrest memo Ex.P14 to Ex.P17.

(18) Bahadur Singh (PW13) in his evidence deposed that on 18-10-2009 he was posted as Head Constable at PS Kurwai and on the said date, Head Constable Bharat Singh had recorded a Dehati Nalishi at Crime No.0/2009 for offences under Sections 147, 148, 307 of IPC. This witness further deposed that he had recorded Original Crime No.247 of 2009 for the offences under Sections 147, 148, 307 of IPC vide FIR, Ex.P21.

(19) We have heard the learned counsel for the parties and have also perused the impugned record.

(20) So far as the contention of counsel for the appellants that the witnesses are related to deceased and there are some contradictions and omissions in their statements is concerned, it is true that although there are minor contradictions and omissions in the evidence of the witnesses, but in the opinion of this Court, they are not so grave or of any significant nature, rather they are trivial in nature and, therefore, on the basis of such contradictions and omissions, whole evidence of the witnesses cannot be discarded. It is settled principle of law that merely because witnesses may be related to the deceased, their testimony may not be rejected. There is no legal canon that only the unrelated witnesses shall be considered credible. On the contrary, we are of the view that it is not natural for related witnesses to implicate a person falsely leaving aside the actual culprit. It is pertinent to mention here that the only interested or chance witnesses want to see real culprit is brought to book. In this regard, the Hon'ble Apex Court in the case of Jayabalan vs. UT of Pondicherry (2010) 1 SCC 199 has held as under:-

"23. We are of the considered view that in cases where the Court is called upon to deal with the evidence of the interested witnesses, the approach of the Court, while appreciating the evidence of such witnesses must not be pedantic. The Court must be

cautious in appreciating and accepting the evidence given by the interested witnesses but the Court must not be suspicious of such evidence. The primary endeavour of the Court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim."

(21) The next contention of learned counsel for the appellants that the seizure memo has not been found proved. Although from the evidence of Bhupendra Singh (PW4) and Bhagwan Singh (PW5), it is clear that in their presence the seizure memo Ex.P9 was not prepared but from the evidence of Investigating Officer R.K Gautam (PW12), it is evident that the incriminating articles like burnt clothes, matchbox and a five-liter container of kerosene were seized vide seizure memo Ex.P9 and the same were sent to FSL Sagar vide Ex.P20.

(22) So far as the contention of learned counsel for the appellants that the trial Court while convicting and sentencing the appellants has not taken into consideration evidence of Randhir Singh (DW1) although he turned hostile and in his deposition he denied the presence of accused and deposed that Harisingh, the husband of deceased Rambai had set deceased Rambai on ablaze, is concerned, but from para 4 of cross-examination of this witness, it is apparent that even this witness was standing under a mango tree at the time of incident happened but he did not try to extinguish fire. As noticed, Dehati Nalishi Ex.P6 and statement of deceased Ex.P7 are very crucial piece of evidence on the strength of which edifice of prosecution is rested upon. Therefore, the evidence given by this witness being creates a serious doubt and is not reliable as he has only given his defence statement in order to save the accused.

(23) So far as the contention of the counsel for the appellants that the statement given by deceased Smt. Rambai cannot be termed as "Oral Dying Declaration" is concerned, it would be appropriate to discuss relevant provisions of law. Under Section 32 of Indian Evidence Act, 1872, a dying declaration is a relevant factor in evidence. When a declaration is made by a person whose death is imminent, the principle attributed to Matthew Arnold that "truth sits upon the lip of a dying man" will come into play. The whole idea of accepting a statement in the name of Dying Declaration comes from a maxim "Nemo moriturus praesumitur mentire" which means "a man will not meet his maker with a lie in his mouth". There is neither rule of law nor of prudence that Dying Declaration cannot be acted upon without corroboration as held by Hon'ble Apex Court in the matter of Mannu Raja v. State of M.P., [1976] 2 SCR 764. If the Court is satisfied that that the Dying Declaration is true and voluntary, it can base conviction on it without corroboration, as observed by Hon'ble Apex Court in the matter of State of UP vs. Ram Sagar Yadav [(1985) 1 SCC 552].

(24) In the matter of Nanhau Ram and Another vs. State of MP (1999 Supp(1) SCC 152), it has been observed by Hon'ble Apex Court that normally the Court in order to satisfy whether the deceased was in a fit mental condition to make the Dying Declaration, look up to the medical opinion. But where the eye- witness has stated that the deceased was in a fit and conscious state to make Dying Declaration, medical opinion cannot prevail. (25) Similarly, in the matter of Laxman vs State Of Maharashtra [(2002)6 SCC 710], a Five-Judge Bench of the Hon'ble Apex Court has held that normally, the Court in order to satisfy whether the deceased was in a fit mental condition to make

the Dying Declaration look up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the Dying Declaration is not acceptable. A Dying Declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate is absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a Dying Declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate, there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor, the declaration can be acted upon provided the Court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and, therefore, the voluntary and truthful nature of the declaration can be established otherwise.

(26) Regarding the principles governing Dying Declaration, the Hon'ble Apex Court in the cases of State of UP vs. Ram Sagar Yadav (1985) 1 SCC 522 and Ramawati Devi vs. State of Bihar (1983) 1 SCC 211 has held that if the Court is satisfied that the Dying Declaration is true and voluntary, then it can base conviction on it without corroboration.

(27) Further, the Hon'ble Apex Court in the case of Surajdeo Oza vs. State of Bihar 1980 Supp SCC 769 has held that equally, merely because the Dying Declaration is a brief statement, cannot be discarded and on the contrary, the shortness of the statement itself guarantees truth.

(28) In the light of the above law laid down by Hon'ble Apex Court, it is apparent that a Dying declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In present case at hand, statement given by the deceased Ex.P7 by orally before her death ensues and the same was reduced to writing by the police. When statement of deceased was recorded, no oath was necessary nor presence of a Magistrate was absolutely necessary, although to assure the authenticity it was necessary to call a Magistrate, if available for recording the statement of a man about to die. Therefore, the doctor while treating the deceased in the Hospital concerned, has not recorded the statement of the deceased cannot be disbelieved nor her statement will vanish in thin air. On perusal of the statement given by deceased in the form of Dying Declaration, it is apparent that deceased had given his statement voluntarily and is trustworthy and same needs no corroboration and appropriate certificate is also not required by doctor while recording evidence of deceased.

(29) The next contention of learned counsel for the appellants that since the deceased was burnt around 80% and her general condition was not proper in order to speak or tell anything to the

doctor at the time of her treatment is concerned, the Hon'ble Apex Court in the matter of Mafabhai Nagarbhai Raval vs.State of Gujarat (1999) 5 SCC 69 has held that a person suffering 99% burn injuries could be deemed capable enough for the purpose of making a Dying Declaration. Unless there exists some inherent and apparent defect, the Court should not have substituted its opinion for that of the doctor and the Dying Declaration is found to be worth of reliance.

(30) Similarly, in the case of State of MP vs. Dal Singh (2013) 14 SCC 159, a two-Judge Bench of Hon'ble Supreme Court has held that the patient who suffered 100% burn injuries is found reliable and the mere fact that the patient suffered 92% burn injuries would not stand in the way of patient giving a Dying Declaration which otherwise inspires confidence of the Court and is free from tutoring and can be found reliable. (31) Further, in burn cases "Rule of Nine" as defined in Mody's Medical Jurisprudence, Epidermal Burns under Second Degree Burn comprise acute inflammation and blisters produced by prolonged application of a flame, liquids at boiling point or solids much above the boiling point of water. Blisters can be produced by the application of strong irritants of vesicants, such as cantharides. Blisters may also be produced on those parts of the body which are exposed to decomposing fluid, such as urine or faeces, and subject to warmth, as seen in old bed-ridden patients. In deeply comatose persons, bullae may occur over pressure areas. If burns are caused by flame or a heated solid substance, the skin is blackened, and the hair singed at the seat of lesion, which assumes the character of the substance used. No scar results as only the superficial layers of the epithelium are destroyed. However, subsequently, some slight staining of the skin may remain. Also, Dermo-Epidermal Burns under Third Degree burn refers to the destruction of the cuticle and part of the true skin, which appears horny and dark, owing to it having been charred and shrivelled. Exposure of nerve endings gives rise to much pain. This leaves a scar, but no contraction, as the scar contains all the elements of the true skin.

(32) From the aforesaid law laid down by the Apex Court as well as on perusal of Mody's Medical Jurisprudence, it is clear that the contention of the counsel for the appellants has no force as the deceased Smt. Rambai who had received around 80% burn injuries became conscious and she was able to speak/tell anything before the police.

(33) On going through the postmortem report of deceased Smt. Rambai Ex.P13, it is evident that as per the opinion given by Dr. Ashok Sharma (PW10) who had conducted the postmortem of deceased Smt. Rambai that the burn injuries on face, neck, chest, nipple, abdomen, both upper forearms, back, both thighs of deceased were at 2-3 Degree and the death of deceased was due to cardio-respiratory failure as a result of burn injuries sustained by deceased.

(34) The last contention of counsel for the appellants that due to previous enmity the appellants have been falsely implicated as it reflects from the evidence of eye-witnesses is concerned, it is well-established principle of law that the enmity or animosity is a double-edged weapon. It cuts both sides. It could be a ground for false implication and it could also be a ground for assault. Just because the witnesses are related to the deceased would be no ground to discard their testimony, if otherwise their testimony inspires confidence. In the given facts of present case, we have no reason to disbelieve the testimony of the eye-witnesses. Similarly, being relatives, it would be their endeavour to see that real culprits are punished and normally, they would not implicate wrong

persons in the crime so as to allow the real culprits to escape unpunished. It is, therefore, not a safe rule to reject their testimony merely on the ground that the complainant party and the accused party were on inimical terms. Similarly, the evidence could not be rejected merely on the basis of relationship of witnesses with the deceased. In such a situation, it only puts the Court with solemn duty to make a deeper probe and scrutinize evidence with more than ordinary care which precaution has already been taken by the trial Court while analyzing and accepting the evidence.

(35) On scanning the evidence of eye-witnesses Shakunbai (PW7), Rupabai (PW11) and Vinod (PW8) it is crystal clear that although there appears some contraction in their evidence, but their evidence is fully corroborated the prosecution version as well as medical evidence and there is ample and direct evidence to show that even prior to the alleged incident in question, the appellants-accused had hurled abuses and set deceased on ablaze by pouring kerosene on her. The Trial Court has rightly relied upon their evidence as well as Dehati Nalishi Ex.P6 and the statement of deceased Ex.P7 treating it as true disclosure of facts by deceased Smt. Rambai and the medical evidence also fully corroborates the version given by the deceased. After analyzing the prosecution evidence, the Trial Court has rightly come to the conclusion that deceased was burnt to death by three appellants by setting her on fire after pouring kerosene on her. (36) In view of foregoing discussions, we are of the opinion that the Trial Court has rightly convicted and sentenced the appellants for the offence aforesaid. Thus, we upheld the conviction and sentence awarded by Trial Court to the appellants for offence who have been charged with, does not call for any interference by this Court. The appeal lacks merit. It is, accordingly, dismissed. The impugned judgment dated 10-06-2011 passed by First Additional Sessions Judge, Vidisha (MP) in Sessions Trial No.03/2010 is also affirmed.

(37) The appellants accused are stated to be in jail. They shall remain in jail to serve out the remaining jail sentence awarded by Trial Court.

Let a copy of this judgment be sent to Jail authorities concerned forthwith and also a copy of this judgment along with LCR be sent to the concerning Trial Court for necessary information and follow-up action.

(G. S. Ahluwalia)
Judge

(Rajeev Kumar Shrivastava)
Judge

MKB

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