CASE NO.:
Appeal (crl.) 1247 of 2001

PETITIONER:
Rambai

RESPONDENT:
State of Chhattisgarh

DATE OF JUDGMENT: 04/10/2002

BENCH:
N. Santosh Hegde & B.P. Singh.

JUDGMENT:
J U D G M E N T

SANTOSH HEGDE, J.

Being aggrieved by the judgment of the High Court of Judicature Chhattisgarh made in Criminal Appeal No. 1873 of 2000 whereby the High Court dismissed the appeal of the appellant filed against the judgment of the Sessions Judge, Raipur, Madhya Pradesh in Sessions Trial No.412 of 1998 the appellant has preferred this appeal before us.

Brief facts necessary for the disposal of this appeal are as follows :

That the appellant and deceased Vidya Bai who is her sister-in-law used to have frequent quarrels. Consequent to which it is stated on 8th of October, 1998 at about 2.30 p.m. the appellant poured kerosene oil on Vidya Bai and burnt her. It is the prosecution case that Vidya Bai on being so burnt ran out of the house when her husband Balram came to her rescue and tried to extinguish the fire, in this process it is stated even he suffered some burn injuries on his hands. Thereafter, it is the prosecution case that Vidya Bai was taken to the hospital where PW.17, Dr. Kiran Aggrawal examined her injuries and found that Vidya Bai suffered almost about 85% burns on her body. Though the police were informed of this incident, they were unable to record any statement of Vidya Bai since she was not in a position to do so. It is the further case of the prosecution that on 12.10.1998 when she regained consciousness a statement was recorded as per Ex.P/9 by PW.11, G.S. Gaharwar which was treated as the first information for registering a crime. It is also stated that on the very same day as per Ex.D/4 the said witness PW.11 also recorded another dying declaration. It is the further case of the prosecution that later in the evening of 12th October, 1998 at about 4.30 p.m. on a request made by the police to the Tehsildar/Executive Magistrate to record the dying declaration of Vidya Bai, PW.12, K.K. Bakshi, came to the hospital and recorded Ex.P/11 another dying declaration of the said Vidya Bai. It is also on the record that said Vidya Bai died around 4.30 a.m. on 13th October, 1998, therefore, a case which had originally registered under Section 307 IPC was re-registered under Section 302 IPC. The appellant who was arrested under Section 307 IPC and thereafter was charged under Section 302 IPC and was tried for the said offence. The prosecution in support of its case examined 19 witnesses, while defence in support of its case examined three witnesses. In her 313 Cr.P.C. statement the appellant took the specific defence that at the time of the mishap she was preparing incense sticks and came to know about burns suffered

by the deceased she also went to extinguish the fire and she had not poured any kerosene oil and set Vidya Bai on fire. She also contended that at the instance of the mother of the deceased in her dying declaration deceased had falsely implicated her.

As stated above the trial court found the appellant guilty of the offence charged and sentenced her to undergo imprisonment for life under section 302 IPC and the High Court has confirmed the said sentence.

Shri Seeraj Bagga, learned counsel appearing as amicus curiae in this case contended that in the instant case there are three dying declarations all made on 12th October, 1998 while the prosecution has relied upon the dying declaration Ex.P/11 that is recorded on that day at about 4.30 p.m. by PW.12. He contended that all the earlier efforts of the prosecution to get a dying declaration recorded failed because of the report of the doctors wherein the said doctors had stated that the injured was not in a fit state to make a dying declaration. Further, he contends that PW.19, Dr. Ashok Sharma who was not the doctor in-charge of the treatment of the deceased for the first time gave a certificate that the deceased was in a fit state to make a statement. In the said backdrop, such a certificate of the doctor PW.19 ought not to be relied upon. In this context, he pointed out that on the very same day i.e. on 10th October, 1998 at about 12.15 p.m. as also at 4.30 p.m. two attempts made by the prosecution investigating agency to record the dying declaration of the deceased failed, because then the doctors had certified that she was not in a fit condition to make statement. He also contended that PW.11 had failed to ensure before the recording of the said dying declaration that the deceased was in a fit mental condition to make the said statement. In the absence of any such certificate by recording authority it is contended that the dying declaration cannot be relied upon.

So far as the position of law in regard to the admissibility of the dying declaration which is not certified by the doctor, the same is now settled by a Constitution Bench judgment of this Court reported in Laxman vs. State of Maharashtra, (JT 2002 (6) 313) wherein overruling the judgment of this Court in Laxmi(Smt.) vs. Om Prakash and ors., (2001 (6) SCC 118), it is held that a dying declaration which does not contain a certificate of the doctor cannot be rejected on that sole ground so long as the person recording the dying declaration was aware of the fact as of the condition of the declarant to make such dying declaration. If the person recording such dying declaration is satisfied that the declarant is in a fit mental condition to make the dying declaration then such dying declaration will not be invalid solely on the ground that the same is not certified by the doctor as to the condition of the declarant to make the dying declaration. Be that as it may, so far as this case is concerned, that question does not arise because in the instant case PW.19, Dr. Ashok Sharma though not a doctor who treated the deceased but being the duty doctor when summoned came and examined the deceased and noted in the dying declaration itself as to the capacity of the deceased to make a dying declaration. That apart from the narration of the questions and answers in the dying declaration it is clear that the deceased was in a fit state of mind to make the statement.

But the learned counsel for the appellant contended that we should examine the contents of the dying declaration in the background of the fact that the deceased had suffered nearly 85% burns and ever since her admission to the hospital she was alternating between consciousness and unconsciousness, as also earlier attempts to record her dying declaration had failed. Therefore the learned counsel contends that it is not safe to place reliance on the dying declaration. We have carefully perused the evidence of PWs.12 and 19 who recorded the dying

declaration and PW.19 who is the doctor who certified the condition of Vidya Bai from their evidence. We are satisfied that the deceased at the time she made the dying declaration was in a fit condition of mind to make such statement. Having found no discrepancy in the statement of the deceased we are inclined to accept the same as held by the courts below.

Learned counsel then contended that from the evidence of the husband, DW.2 himself, it is clear that the deceased must have suffered burn injuries while she was cooking lunch, therefore, it is not safe to rely upon the prosecution evidence to convict the appellant. We notice the courts below have considered this argument and taking the preponderance of evidence and also the factum that the husband of the deceased had resiled from his statement made before the investigating officer have held that it is not safe to rely upon DW.2. In such a situation we are unable to take a contra view from the one taken by the courts below.

Having carefully examined the judgments of the courts below and material on record, we are satisfied that the courts below have correctly come to the conclusion as to the guilt of the appellant. In the said view of the matter the appeal fails and the same is dismissed.

We place on record our appreciation for the assistance rendered by Shri Seeraj Bagga, Advocate, as amicus curiae in this case and direct the payment for a sum of Rs.750/- to him as fee.

We also permit Shri Prakash Shrivastava, Advocate for respondent to file his Vakalatnama within four weeks from today.