



2022 INSC 734

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1293 OF 2018

GORABAI APPELLANT

VERSUS

STATE OF MADHYA PRADESH RESPONDENT

WITH

CRIMINAL APPEAL NO. 859 OF 2021

J U D G M E N T

SANJIV KHANNA, J.

Seventibai (since deceased) and Kalabai stand convicted for the offences under Section 302 read with Section 147, whereas Natwar, Hosilal and Gaurabai¹ have been convicted for the offences under Section 302 read with Section 149, and Section 147 of the Indian Penal Code, 1860².

2. Dying declarations of the deceased, Nandabai are the cynosure to the prosecution's case.
3. Tarabai (PW-1)-sister-in-law of Nandabai; Munna Lal (PW-3); Kailash (PW-5); Durga Das (PW-6)- husband of Nandabai; and

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¹ Also referred to as "Gorabai".

² For short, "IPC".

Tarachand (PW-16)- brother-in-law of Nandabai, have spoken and articulated about the oral dying declaration of Nandabai, which she made immediately after she and her three minor daughters had suffered burn injuries at her home on 31.07.1996. These witnesses had reached the residence where Nandabai and her three minor daughters were staying and have testified that Nandabai, on being questioned about the injuries, had implicated the appellants and Seventibai as the perpetrators.

4. Learned counsel for the appellants submits that Tarabai (PW-1), has deposed that as per Nandabai, Seventibai had poured kerosene oil and Kalabai had set her and her daughters on fire with a *diya*. However as per the testimonies of Munna Lal (PW-3), Kailash (PW-5), Durga Das (PW-6) and Tarachand (PW-16), Nandabai had stated that Seventibai, Kalabai, Gaurabai, Natwar, and Hosilal surrounded them, and thereupon, Seventibai had poured kerosene oil and set them to fire from the kerosene chimney or oil lamp.
5. Tarabai's (PW-1) deposition, while setting out the direct role of Seventibai and Kalabai, it is correct has not mentioned about Gaurabai, Natwar, and Hosilal. This is explainable because, as per Tarabai (PW-1), Seventibai and Kalabai had poured kerosene oil and set the fire. Tarabai (PW-1) is an innocent illiterate villager, who

would not be aware of the legal significance of the physical presence of other appellants at that time. Further, this lack of summation is not sufficient to discard a detailed and elaborate account of the dying declaration by Nandabai, as narrated by Munna Lal (PW-3), Kailash (PW-5), Durga Das (PW-6) and Tarachand (PW-16). Nandabai and her three daughters were subjected to restraint and thereupon were inflicted burns in the presence of other appellants is born out and proven.

6. The prosecution equally relies on the dying declaration recorded in writing by Ravi Shankar (PW-13), City Superintendent of Police, Khandwa, marked Exhibit P-23. In the dying declaration recorded by Ravi Shankar (PW-13), Nandabai had named Seventibai and the appellants as the perpetrators who had caused the burn injuries by pouring kerosene oil and setting the fire. Ravi Shanker (PW-13) has referred to the presence of the doctor, namely, Dr Chauhan, who was not examined, but his signatures on Exhibit P-23 have been proved. The testimony of Ravi Shankar (PW-13) is corroborated by Jagan (PW-15), one of the witnesses to the written dying declaration, who was present in the hospital at that time. Munna Lal (PW-3), Kailash (PW-5) and Durga Das (PW-6) have deposed that Nandabai was intermittently conscious after the incident.

7. Munna Lal (PW-3) has stated that on being informed about the incident, he went inside the house of Nandabai and saw Nandabai and her three children lying burnt. Thereupon, he had proceeded to speak to the Surpunch Babu Lal (PW-4), who then came to the spot. On the statement of Surpunch Babu Lal (PW-4), the First Information Report³ No. 444/96, marked as Exhibit P-16, was recorded at the Police Station of Khandwa. Surpunch Babu Lal (PW-4) was declared hostile, however, the statement made by Surpunch Babu Lal (PW-4), which was the basis for registering the FIR stands proven by P.S. Yadav (PW-9), Assistant Sub-Inspector, who had recorded his statement. The FIR refers to the written dying declaration as recorded by Ravi Shankar (PW-13).
8. There is also evidence to establish the motive. Tarabai (PW-1), Durga Das (PW-6) and Tarachand (PW-16) have deposed that the appellants believed that Nandabai was responsible for defaming Gaurabai due to her suspicion that Gaurabai was having illicit relations with her husband, Durga Das (PW-6). This was objected to and taken as an offence by the family members of Gaurabai, namely, her grandmother- Seventibai, her mother- Kalabai, her father- Natwar and her uncle- Hosilal.

³ For Short, "FIR".

9. Kailash (PW-5), the neighbour of the deceased, has testified that at around 7.00 P.M., he had seen the appellants and Seventibai outside the house of the deceased and at that time appellant Hosilal was saying that he would kill Nandabai and ruin their family. Thereafter, Kailash (PW-5), had proceeded to his own house to do work. Subsequently, Kailash (PW-5) had seen the appellants running away from the side of the house of one Shobhalal towards the lane. On being asked why the appellants were running, the appellants did not say anything. Kailash (PW-5) had proceeded to the house of the deceased, and saw Tarabai (PW-1) and Manohar (PW-2) extinguishing the fire. He also saw a kerosene chimney or oil lamp inside the house of the deceased.
10. Baldev Singh Thakur (PW-17), who was posted as the City Inspector at the Police Station, Khandwa, had seized burnt hair, cloth, matchbox, and other articles vide Seizure Memo Exhibit P-25 from the house. He had also seized the ration card vide Exhibit P-10 as per which five litres of kerosene oil were purchased on 22.07.1996.
11. The homicidal death of Nandabai and her three minor daughters is established from the testimonies of Dr Shashi Kant (PW-7), Dr A.K. Shukla (PW-10), Dr Avtar Singh (PW-11), and Dr Sanjay Srivastava

(PW-12), who had proved the post-mortem reports of Nandabai and her three minor daughters, marked Exhibits P-12, P-18, P-20 and P-22. The cause of death of Nandabai and her daughters is attributed to shock resulting from extensive burn injuries which were antemortem.

12. In our view, in the present case, the dying declarations are fully corroborated by the evidence on record. The alleged discrepancies as contended by the learned counsel for the appellants are minor in nature and do not, in any way, dent the court testimony of the witnesses on the oral and the recorded dying declaration of Nandabai.

13. In view of the aforesaid discussion, we do not have any hesitation in upholding the conviction of the appellants and the sentence awarded to them. Accordingly, the present appeals are dismissed.

.....**J.**
(SANJIV KHANNA)

.....**J.**
(BELA M. TRIVEDI)

NEW DELHI;
JULY 20, 2022.