REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.827 OF 2008

DASIN BAI@ SHANTI BAI ……**Appellant**

:Versus:

STATE OF CHHATTISGARH ……**Respondent**

JUDGMENT

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:

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.

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.

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.

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.

6. The Sessions Court after hearing the counsel on both 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 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.

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 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.

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.

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 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.

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 several reasons the dying declaration cannot be believed. She submitted that looking to the nature of injuries suffered 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 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. 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 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.

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 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:

> "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.

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.

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.

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.

.....J

(M.Y. EQBAL)

.....J

(PINAKI CHANDRA GHOSE)

New Delhi;

February 11, 2015.