

v+

Cr1.A.No. 1116 OF 1999
ITEM NO. 102

COURT NO. 3

SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDING

CRIMINAL APPEAL No. 1116 of 1999@@
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State of Madhya Pradesh ..Appellant

Vs.

Ram Vijay ..Respondent
(With Appln.(s) for exemption from filing O.T. and office
report)

Date : 31/10/2001 This/these Petition(s) was/were called on for
hearing today.

CORAM :

HON'BLE MR. JUSTICE K.T. THOMAS
HON'BLE MR. JUSTICE S.N. VARIAVA

For Appellant Ms. Geetanjli Mohan,Adv.
Mr. Uma Nath Singh, Adv.

For Respondent Mr. Shiv Sagar Tiwari,Adv.

UPON hearing counsel the Court made the following

O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J.

.SP2 Appeal is dismissed in terms of the signed order.
.SP1

(N.K. Goel) (H.K. Bhatia)
Court Master Court Master
(Signed order is placed on the file)

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.PL55

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1116 of 1999@@
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State of Madhya Pradesh ..Appellant

Vs.

Ram Vijay

..Respondent

O R D E R@@
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.....L.....I.....T.....T.....T.....T.....T.....T.....T....J
.SP2

This appeal by the State is in challenge of an order of acquittal passed by the trial court of the offence under Section 302 of the Indian Penal Code. A Division Bench of the High Court confirmed the order of acquittal and dismissed the appeal filed by the State.

Deceased - Mallo Bai died of burn injuries. Prosecution alleged that her husband - respondent poured kerosine on her during the noon of 7.4.1987 inside their house and set her ablaze.

Among the witnesses examined by the prosecution PW1-Bihari (the brother of the deceased), PW2 (a neighbour), PW3 (a neighbour) and PW6 (sister of the deceased) were ..2/-

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declared hostile as they did not support the prosecution version. It was PW13 (Executive Magistrate) who said that deceased made a dying declaration to him, it is marked as Exhibit P-17.

The trial court declined to base a conviction on the dying declaration for which some reasons have been stated. The High Court also was not persuaded to act on the said dying declaration. Though the law does not inhibit a court from using a dying declaration as the sole basis for convicting a person the legal position is well settled that such dying declaration should appear to the court to be true and voluntary. The narration given in the dying declaration recorded by PW13 shows that there was actually no reason for the respondent to set her ablaze. She was asked to make some food with meat and she obliged her husband by preparing the food as demanded by him. He also asked her to procure some liquor for him. According to her she sent her son for bringing liquor. If that be so, why the accused turned against her and asked her "why did you yourself go to the liquor shop to bring the liquor". According to exhibit P17, he set her ablaze after pouring kerosine on her. The aforesaid narrations does not impress us as the true episode which would have taken place which resulted in the death of the deceased.

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As the trial court and the High Court declined to act on the dying declaration we decline to interfere with the finding in this appeal filed under Article 136 of the Constitution. Accordingly, we dismiss this appeal.

.SP1

.....J.@@
BB
(K.T. THOMAS)@@
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.....J.@@
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(S.N. VARIAVA)@@
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NEW DELHI@@
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OCTOBER 31, 2001 @@
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