

CASE NO.:
Appeal (crl.) 1531 of 2004

PETITIONER:
Bapu

RESPONDENT:
State of Maharashtra

DATE OF JUDGMENT: 16/11/2006

BENCH:
S. B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

MARKANDEY KATJU, J.

This appeal has been filed against the impugned judgment dated 17.10.2003 of the Bombay High Court (Aurangabad Bench). By that Judgment the High Court has upheld the conviction of the appellant by the Second Additional Session Judge, Jalgaon by its judgment dated 24.8.1998, finding the appellant guilty of an offence under Section 302 I.P.C. and awarding him the sentence of life imprisonment and fine of Rs.1,000/-.

We have heard the counsel for the parties and perused the record.

The appellant and the deceased Shobhabai were married to each other for about 1= years prior to the incident in question which took place on 21.8.1997 at about 3.00 a.m. According to the prosecution, the deceased Shobhabai was being harassed and treated cruelly by the appellant because a gift by way of 'Mul' was not being paid or given by the parents of the deceased Shobhabai after the marriage, which is a practice in their community, and on that count there was a demand of Rs.10,000/- by the appellant prior to the incident. It is alleged that the appellant had taken the deceased Shobhabai to the house of her parents and left her there with an understanding that unless she brings Rs.10,000/- by way of 'Mul', she will not return to her matrimonial home. However, the parents and brother as also the mediator of the marriage of Shobhabai with the appellant, somehow or the other, convinced her and brought her back to the house of the appellant. The brother of the deceased Shobhabai and the mediator also persuaded the accused person that they should not trouble Shobhabai and their demands will be satisfied within a short period. However, within a period of 2-3 days thereafter, the incident in question took place in the night at 3.00 a.m. on 21.8.1997.

According to the prosecution, in that night, prior to going to bed, the mother of the appellant had abused the deceased Shobhabai on account of not washing and cleaning utensils and also on a suspicion of theft of silver ornaments of the sister-in-law of deceased Shobhabai by the deceased. It is alleged that in the morning at 3.00 a.m. when deceased Shobhabai got up, the appellant quarreled with her and when the deceased came outside the house on a platform, the appellant poured kerosene on her and

set her on fire with a matchstick. The villagers gathered and extinguished the fire. Thereafter she was taken to Rural Hospital, Bhadgaon where her dying declarations were recorded initially by the Executive Magistrate in the presence of Dr. Damodar who endorsed it, and later by Police Head Constable PW6 Yanushka Tadavi in the presence of PW8 Lata Patil and the doctor (who endorsed it), in which Shobhabai named the appellant as the culprit. Thereafter she was shifted from Rural Hospital, Bhadgaon to Civil Hospital, Jalgaon where also she made dying declaration to her mother Reshmabai PW2, her brother Suresh PW3 and her cousin Dattatreya PW4, in which also she implicated the appellant. She succumbed to her burn injuries on 22.8.1997 at about 9.30 a.m.

In order to prove the guilt of the accused person, the prosecution has examined eleven witnesses viz., PW2 Reshmabai, mother of the deceased, PW3 Suresh, brother of the deceased, PW4 Dattatraya, maternal cousin of the deceased, PW5 Govind Pardeshi, Executive Magistrate at Bhadgaon, PW6 Yanushka, Head Constable at P.S. Bhadgaon, Dr. Damodar PW7, Latabai PW8, Adhikar Shamrao Patil PW10, the mediator in the settlement of the marriage of deceased Shobhabai with the appellant and Dinkar Ingale PW11.

PW1 is a witness on the scene of the offence and the recoveries from the said place, while PWs 3 to 8 were examined by the prosecution to prove the dying declarations recorded by Executive Magistrate at Ext.32 and by Police Head Constable at Ext.35. PW11 Mr. Ingale is the P.S.I., who has investigated the crime. PW9 was a witness on the point of ill-treatment meted out to the deceased at the hands of accused and his mother, but he has not supported the prosecution and was declared hostile by the prosecution.

The accused examined two defence witnesses, namely, DW1 Shivaji Patil and DW2 Appa Shankar Patil, in order to prove the fact that the appellant was not responsible for setting the deceased on fire and that the deceased caught the fire accidentally, and that at the relevant time the accused was sleeping at the threshing floor.

The evidence on record shows that the incident occurred in the house of the accused-appellant. The deceased Shobhabai was initially admitted in Rural Hospital, Bhadgaon where the dying declaration was recorded by the Police as well as the Executive Magistrate. The deceased was thereafter shifted to Civil Hospital, Jalgaon and the deceased repeated her dying declaration before several other persons. Thus the deceased has made her dying declaration before PW2 Reshmabai, the mother of the deceased, PW3 Suresh, the brother of the deceased, PW4 Dattatraya, the cousin brother of the deceased, PW5 Govind Pardeshi, the Executive Magistrate, PW6 Yanushka Tadavi, Head Constable in Bhadgaon Police Station, PW7 Dr. Damodar Sonawane, who was attached to Rural Hospital Bhadgaon and PW8 Latabai Patil, who was the President of the Taluka Women Vigilance Committee, Bhadgaon.

In all these dying declarations, the deceased Shobhabai has stated that it was the appellant who poured kerosene on her and set her on fire by a matchstick and all these dying declarations are consistent with each other. According to Dr. Damodar, who had examined the deceased, she had sustained 88% burns which were deep. However, Dr. Damodar has stated that Shobhabai was speaking in an audible voice and it was not true to say that she was not in a position to speak. The witnesses all have stated that the deceased was at the time of dying declarations in a fit mental

condition. Dr. Damodar has stated that Shobhabai made her dying declaration to the Executive Magistrate in the presence of Dr. Damodar and he has signed on the same vide Exh.32A. What was narrated was recorded by the Executive Magistrate.

In this dying declaration Shobhabai has stated that there was a quarrel between her and her mother-in-law about cleaning and washing utensils and suspicion of theft of silver ornaments by the deceased. Her mother-in-law then talked to the appellant, who came to the house and poured kerosene on his wife Shobhabai and set her on fire. The statement of the deceased was recorded by PW6 Yanushka, Head Constable as per the narration of Shobhabai, whose thumb mark was taken on the statement and it was signed by the PW6 and endorsement of the Medical Officer as well as Latabai Patil were also obtained vide Ext.35.

We see no reason to doubt the veracity of the dying declarations especially since there is consistency between all of them. We see no reason why the Executive Magistrate Govind or Dr. Damodar or the other witnesses should make a false statement about the dying declaration. There is no allegation of enmity between the accused and these persons.

As observed by the Supreme Court in Narain Singh vs. State of Haryana, AIR 2004 SC 1616 vide paragraph 7:

"A dying declaration made by a person on the verge of his death has a special sanctity as at that solemn moment a person is most unlikely to make any untrue statement. The shadow of impending death is by itself guarantee of the truth of the statement of the deceased regarding circumstances leading to his death. But at the same time the dying declaration like any other evidence has to be tested on the touchstone of credibility to be acceptable. It is more so, as the accused does not get an opportunity of questioning veracity of the statement by cross-examination. The dying declaration if found reliable can form the base of conviction."

In Babulal & Ors. vs. State of M.P. 2003(12) SCC 490 the Supreme Court observed vide in paragraph 7 of the said decision as under:

"A person who is facing imminent death, with even a shadow of continuing in this world practically non-existent, every motive of falsehood is obliterated. The mind gets altered by most powerful ethical reasons to speak only the truth. Great solemnity and sanctity is attached to the words of a dying person because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person. The maxim is "a man will not meet his Maker with a lie in his mouth" (nemo moriturus praesumitur mentire). Mathew Arnold said, "truth sits on the lips of a dying man". The general principle on which the species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death, and when every hope of this world is gone, when every motive to falsehood is silenced and mind induced by the most powerful consideration to speak the truth; situation so solemn that law considers the same as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice."

In Ravi & Anr. vs. State of T.N. 2004(10) SCC 776 the Supreme Court observed that "if the truthfulness of the dying declaration cannot be doubted, the same alone can form the basis of conviction of the accused and the same does not require any corroboration whatsoever, in law."

In Muthu Kutty & Anr. vs. State 2005(9) SCC 113, vide paragraph 15 the Supreme Court observed as under :
"Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in Paniben vs. State of Gujarat (1992(2) SCC 474, pp.480-81, paras 18-19)

(emphasis supplied)

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See Munnu Raja vs. State of M.P. 1976(3) SCC 104).

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration (See State of U.P. vs. Ram Sagar Yadav 1985(1) SCC 552 and Ramawati Devi vs. State of Bihar 1983(1) SCC 211).

(iii) The Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See K. Ramachandra Reddy vs. Public Prosecutor 1976(3) SCC 618).

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See Rasheed Beg vs. State of M.P. 1974(4) SCC

264).

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See *Kake Singh vs. State of M.P.* 1981 (Supp.) SCC 25).

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See *Ram Manorath vs. State of U.P.* 1981(2) SCC 654).

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (See *State of Maharashtra vs. Krishnamurti Laxmipati Naidu* 1980 (Supp.) SCC 455).

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See *Surajdeo Ojha vs. State of Bihar* 1980 (Supp.) SCC 769).

(ix) Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See *Nanhau Ram vs. State of M.P.* 1988(Supp.) SCC 152).

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See *State of U.P. vs. Madan Mohan* 1989(3) SCC 390).

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. (See *Mohanlal Gangaram Gehani vs. State of Maharashtra* 1982(1) SCC 700)."

A perusal of the various decisions of this Court, some of which have been referred to above, shows that if a dying declaration is found to be reliable then there is no need for corroboration by any witness, and conviction can be sustained on its basis alone.

In the present case, the evidence of the Executive Magistrate, the Doctor and the other witnesses is unequivocal that the deceased was conscious and was able to answer the questions. If some persons other than the accused had poured kerosene on the

deceased and burnt her, there was no reason why the deceased should have thought of implicating the accused instead of the real culprits. We, therefore, see no reason to disbelieve the dying declaration of the deceased. Hence we uphold the judgment of the courts below.

With the above observations this appeal is dismissed.

JUDIS