REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 168 OF 2009
(Arising out of SLP (Crl.) No. 8054 of 2007)

Varikuppal Srinivas ..Appellant

Versus

State of A.P. ..
Respondent

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of the Andhra Pradesh High Court upholding the conviction of the appellant for offences punishable under Sections 498A and 304B of the Indian Penal Code, 1860 (in short the 'IPC'). Learned 4th Additional Metropolitan Sessions Judge, Hyderabad had convicted both the accused persons for offences punishable

under Sections 498A and 304B IPC and sentenced each to undergo rigorous imprisonment for one year and seven years respectively and to pay a fine of Rs.200/- with default stipulation. In appeal, A2 was acquitted by the High Court.

3. Prosecution version in a nutshell is as follows:

A1 the present appellant is the son of A2 who married Manjula (hereinafter referred to as the 'deceased') the daughter of PWs.1 & 2 about six years prior to the date of incident. Sub Inspector of Police (PW9) of Osmania University Police Station received a message at 6.45 P.M. on 8.2.1999 from Gandhi Hospital stating that one Manjula was admitted in the hospital allegedly having consumed unknown acid at her residence on the said date. He entered the same in G.D., went to the hospital and found that the deceased was unable to speak due to acid burns in her throat. All his visits on subsequent dates proved futile. Therefore, he deputed Constable (P.W.3) on 13-2-1999 to the hospital. Accordingly, he went to the hospital at 11 A.M. and recorded her statement-Ex.P2 and handed over the said statement to P.W.9. On the basis of the said statement P.W.9 registered a case in Cr.No.34 of 1999 under Sections 498-A and 307 IPC and issued

FIR-Ex.P12 to all concerned. He visited the Gandhi Hospital and recorded statement under Section 161 of the Code of Criminal Procedure, 1973 (in short the 'Code') of the deceased under Ex.P13. He further examined P.Ws.1, 2 and others, visited the scene of offence, which is the house of the deceased at Manikanteswar Nagar, but did not find any incriminating material at the scene of offence and examined the neighbours. He sent a requisition-Ex.P3 to P.W.4-XXII Metropolitan Magistrate, Hyderabad for recording the dying declaration of the deceased. On receipt of requisition the Magistrate visited the hospital at 7.20 P.M. and after obtaining endorsement of the doctor that patient was conscious and coherent and also after putting some preliminary questions he recorded the dying declaration-(Ex.P4). Thereafter, P.W.9 arrested the accused on 23-03-1999 and sent them to court, subsequently on 13-04-1999 on the instructions of Assistant Commissioner of Police he along with P.Ws.8 and 7 proceeded to Golanukonda village and exhumed the dead body of the deceased PW 7, the M.R.O. conducted inquest over the dead body of the deceased and Professor (PW 8), Forensic Medicine, Kakatiya Medical College, Waranga conducted postmortem examination. After completion of investigation police laid the charge sheet for the offence as aforementioned.

On committal, charges were framed against the accused; read over and explained to them in Telugu and they pleaded not guilty.

The prosecution in order- to prove its case examined P.Ws.1 to 13 and marked Exs.P1 to P16. No oral or documentary evidence has been adduced on defense side.

The learned Sessions Judge after evaluating the evidence on record found the accused guilty and convicted for the offence, as aforementioned.

The trial court relied primarily on the statement made before the Head Constable (PW3). The statement recorded by him is Exh.P2. The Magistrate (PW 4) recorded the dying declaration. Placing reliance on the evidence more particularly on the dying declaration, the conviction was recorded.

In appeal, the primary stand was that the evidence was insufficient to convict A2 and that the dying declaration should not have been acted upon. The High Court found substance in the plea that the evidence was not sufficient to convict A2, but found the evidence to be sufficient so far as A1 i.e. present appellant is concerned.

4. Learned counsel for the appellant submitted that the evidence of the magistrate (PW 4) should not have been accepted so far as the dying declaration is concerned. The medical evidence does not show that the victim was in a position to give any statement.

5. In response, learned counsel for the respondent submitted that the statements made by the deceased that is Exhs.P2, P4 and P13 are consistent with regard to the A1 pouring acid in the mouth of the deceased which resulted in her death.

6. The deceased breathed her last on 9.4.1999. The dead body was exhumed on 13.4.1999.

7. This is a case where the basis of conviction of the accused by the trial Court was the dying declarations. The situation in which a person is on his deathbed, being exceedingly solemn, serene and grave, is the reason in law to accept the veracity of his statement. It is for this reason that the requirements of oath and cross-examination are dispensed with. Besides should the dying declaration be excluded it will result in miscarriage of

justice because the victim being generally the only eye-witness in a serious crime, the exclusion of the statement would leave the Court without a scrap of evidence.

8. 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 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 Smt. Paniben v. State of Gujarat (AIR 1992 SC 1817):

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. [See Munnu Raja & Anr. v. The State of Madhya Pradesh (1976) 2 SCR 764)]

(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 Uttar Pradesh v. Ram Sagar Yadav and Ors. (AIR 1985 SC 416) and Ramavati Devi v. State of Bihar (AIR 1983 SC 164)]

(iii) The Court has to scrutinize 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 and Anr. v. The Public Prosecutor (AIR 1976 SC 1994)]

(iv) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence. [See Rasheed Beg v. State of Madhya Pradesh (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 Kaka Singh v State of M.P. (AIR 1982 SC 1021)]

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

(vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected. [See State of Maharashtra v. Krishnamurthi Laxmipati Naidu (AIR 1981 SC 617)]

(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 Oza and Ors. v. State of Bihar (AIR 1979 SC 1505).

(ix) Normally the Court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eye-witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. [See Nanahau Ram and Anr. v. State of Madhya Pradesh (AIR 1988 SC 912)].

(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. v. Madan Mohan and Ors. (AIR 1989 SC 1519)].

(xi) Where there is 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 declarations could be held to be trustworthy and reliable,

it has to be accepted. [See Mohanlal Gangaram Gehani v.State of Maharashtra (AIR 1982 SC 839) and Mohan Lal and Ors. v. State of Haryana (2007 (9) SCC 151).

9. In the background of the principles set out above, the inevitable conclusion is that the trial court and the High Court have rightly convicted the appellant for offence punishable under Sections 498A and 304B IPC.

10. The appeal is without merit, deserves dismissal, which we direct.

…….J.
(Dr. ARIJIT PASAYAT)

…….J.
(ASOK KUMAR GANGULY)

New Delhi,
January 28, 2009