CASE NO.:
Appeal (crl.) 346 of 2008

PETITIONER:
Shaik Nagoor

RESPONDENT:
State of A.P. rep. by its Public Prosecutor, High Court of A.P., Hyderabad

DATE OF JUDGMENT: 20/02/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO. 346 OF 2008
(Arising out of SLP(Crl.) NO. 3019 of 2007)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the judgment of a learned Single Judge of the Andhra Pradesh High Court. By the impugned judgment conviction of the appellant for offences punishable under Sections 354 and 448 of the Indian Penal Code, 1860 (in short the 'IPC') was upheld, but the conviction for offence punishable under Section 306 IPC was set aside. However the sentence of three years imprisonment for offence punishable under Section 354 IPC which was imposed by the trial court was reduced to two years. The sentence of six months imprisonment and fine for offences relatable to Section 448 IPC were maintained by the High Court.
3. Prosecution version in a nutshell is as follows: Shaik Khasim Bee (hereinafter referred to as the 'deceased') is daughter of Shaik Nagoor (PW5) and Shaik Nazer Bee (PW 1). Accused, Shaik Nagoor was at the relevant point of time the tenant in their house at Singhnagar, Vijayawada. Accused as a tenant in a small hut in the same compound of the house of PW 1. It appears that accused was soliciting the deceased for sexual intercourse. On 12.11.1999 around 1.00 pm. PW 1 and the deceased went for Namaz and thereafter deceased returned home while PW-1 was coming behind after talking to one Kursheed begum for some time. When the deceased came home and went into middle portion of the house, which was vacant for collecting dried clothes, accused allegedly came behind, caught hold of her, and when she threatened him saying that she would complain to her mother about the acts of the accused, he in turn replied that he himself, would complain to her mother saying that she herself called him and thereby, would defame her and her family. Feeling disturbed and suffering from emotional turmoil, deceased went into room, poured kerosene and set fire to herself. On receipt of intimation from the Hospital, police of Nunna Rural Police Station, Vijayawada City, registered a case against the accused in Crime No. 258 of 1999 for the offences punishable under Sections 448, 354 and 306 IPC and after investigation filed charge sheet and the same was

taken on file in S.C. No. 181 of 2001. Accused pleaded innocence and false implication.

4. In order to further its version prosecution examined 12 witnesses and marked several documents. The trial court placed reliance on the dying declaration (Exh. P4 \026 P9) recorded by the learned 7th Additional Senior Civil Judge, City Civil Court, Hyderabad and the Head Constable respectively on 12.11.1999. The High Court found that offence under Section 306 IPC as noted above was not made out. However, concurred with the learned trial judge that the offences punishable under Sections 354 and 448 IPC were clearly made out. Accordingly the impugned judgment was passed.

5. In support of the appeal, learned counsel for the appellant submitted that the dying declarations 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 her part to give any dying declaration.

6. Learned counsel for the respondent on the other hand supported the impugned judgment of the High Court.

7. We see no reason to doubt the veracity of the dying declarations especially since there is consistency between them. We see no reason why the judicial officer should make a false statement about the dying declaration.

8. As observed by this Court in Narain Singh v. State of Haryana AIR vide para 7: (SCC p. 267, para 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 the 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."

9. In Babulal v. State of M.P. (2003 (12) SCC 490) this Court observed vide in para 7 of the said decision as under: (SCC p. 494)

"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 mentiri). 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."

10. In Ravi v. State of T.N. ((2004 (10) SCC 776) this Court observed that: (SCC p. 777, para 3)
"If the truthfulness 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 Muthu Kutty v. State (2005 (9) SCC 113) vide para 15 this Court observed as under: (SCC pp. 120-21)
"15. 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 v. State of Gujarat (1992 (2) SCC 474) : (SCC 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 v. 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. v. Ram Sagar Yadav and Ramawati Devi v. State of Bihar (1985 (1) SCC 552)
(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 v. Public Prosecutor (1976 (3) SCC 618)

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See Rasheed Beg v. 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 v. State of M.P.(1981Supp. SCC 25)

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See Ram Manorath v. 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 v. 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 v. 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 v. 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. v. 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 v. State of Maharashtra (1982 (1) SCC 700)"

12. So far as the practicability of the deceased giving dying declaration is concerned it is significant that the learned Additional Senior Civil Judge who has examined PW 7 and the constable PW 10 have described in detail as to what the deceased has stated to each one of them. There was not even any suggestion to either of the witnesses that the deceased was not in a fit condition to give any statement as claimed. That being so, there is no substance in the plea of learned counsel for the appellant that the deceased was not in a physical condition to give a statement.
13. The trial Court and the High Court have analysed the evidence of these witnesses and the statements made in the dying declaration referred to above to hold the accused guilty.
14. That being so, no interference is called for. The appeal fails and is dismissed.