REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 435 OF 2009
(Arising out of SLP (Crl.) No. 665 of 2008)

Satish Ambanna Bansode ...Appellant

Versus

State of Maharashtra ...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 a Division Bench of the Bombay High Court dismissing the appeal filed by the appellant who was convicted for offence punishable under Section 302 of the Indian Penal

Code, 1860 (in short the 'IPC') and was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.100/- with default stipulation.

3. Prosecution version in a nutshell is as follows:

Satyawwa (hereinafter referred to as `the deceased') aged 28 years at the time of alleged incident was married to the accused about 15 years ago and it can be said that it was a child marriage. At the time of incident, the couple was gifted with two daughters, namely, Renuka and Chandrawwa. But the daughters were staying in Indira Nagar locality of Sangli, where the parents of deceased Satyawwa were residing. Satyawwa and accused were staying at Visa Pure Galli Miraj.

4. The incident took place on the night of 4th and 5th October, 1999 at about 2.30 a.m. on 5th " October, 1999. As stated by Satyawwa before her death, accused - husband was drunk; he abruptly woke up at about 2.30 a.m. and started beating her and she got scared. Accused picked up kerosene tin from the house, poured it on her person and ignited her by using a match-stick. She also stated that as the saree caught fire, she started shouting. At this juncture, husband tried to remove saree from her person and in that

process, he suffered burn injuries on both his hands. Neighbours also gathered and both were taken to Civil Hospital, Sangli in a rickshaw.

5. Subhash Koli, Police Head Constable (P.W.3) attached to Vishrambaug Police Station, was posted on duty at Civil Hospital. After admission of Satyawwa at about 4.00 a.m., intimation was sent by the hospital to the police station and therefore, he was instructed by the police officials to record the statement of patient. He accordingly recorded statement of Satyawwa, only after obtaining opinion from Dr. M.G. Madhu Kumar between 6.30 a.m. to 7.00 a.m. on 5.10.1999. Satyawwa succumbed to burn injuries at about 10 a.m. It appears that dying declaration was treated as an F.I.R. by Miraj police station, and Crime No.194 of 1999 was registered. The investigation was carried out in parts by P.S.I. Shri Ramesh Bhokare (P.W.6) and A.I.P. Shri. Baliram Waghchavre (P.W.7). The dying declaration was treated as an First Information Report by Miraj Police Station and the case was registered. After completion of investigation charge sheet was filed. The accused pleaded innocence, therefore trial was held. It is needless to say that the trial ended in conviction by the judgment which was challenged before the High Court.

6. Apart from P.W.3 Subhash Koli Police Head Constable, Dr. Madhu Kumar (P.W.4) Medical Officer was present when the patient was admitted and also when the dying declaration was recorded. Shabbir Gulab Mulla (P.W. 1) who is the neighbour of the accused and victim, and Mohd. Hanif Dastgir (P.W.2), who is the landlord of the accused provided some details about the incident. Dr. Nandkurnar Banage (P.W.5) was the medical officer attached to Civil Hospital, Sangli at the material time. He had performed autopsy and by post mortem notes he has recorded his opinion regarding cause of death due to 'Septicemia' shock due to 95% of superficial to deep burns.

7. Stand of the accused appellant before the trial Court was that on the basis of the dying declaration the conviction should not have been recorded. Further, the deceased was not fit to make any statement and, therefore, the so called dying declaration is not trustworthy. The trial Court did not accept the plea. Before the High Court the plea taken before the trial Court was re-iterated which came to be rejected by the impugned judgment and the appeal was dismissed.

8. In support of the appeal learned counsel for the appellant submitted that the evidence of doctor clearly indicated that the victim was not in a condition to give dying declaration and that the statement was the result of tutoring.

9. Learned counsel for the respondent-State on the other hand supported the judgment.

10. So far as the statement of doctor is concerned, a hypothetical answer was given to a question regarding the effect of the patient who suffered burn of a very high percentage. The doctor has categorically stated that the patient who gave dying declaration was in a position to do so. The stand taken before the trial Court and before the High Court was rejected as there was no accidental burn due to fall of small lantern. This plea is clearly without substance as rightly noted by the trial Court and the High Court.

11. This is a case where the basis of conviction of the accused is the dying declaration. The situation in which a person is on the deathbed is so solemn and serene when he is dying that the grave position in which he is placed, 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 the miscarriage of justice because the victim being generally the only eyewitness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence.

12. 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 on the same 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)

(*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 (1985(1) SCC 552)* and *Ramawati Devi* v. *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* v. *Public Prosecutor(1976 (3) SCC 618)]*)

(*iv*) Where a 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.(1981 Supp. 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 the deceased was in a fit mental condition to make the dying declaration looks 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 statements in the nature of dying declaration, the one first in point of time must be preferred. Of course, if the plurality of the 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)]*

13. In the light of the above principles, the acceptability of the alleged dying declaration in the instant case has to be considered. The dying declaration is only a piece of untested evidence and must, like any other evidence, satisfy the court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration. (See *Gangotri Singh* v. *State of U.P.(1993 Supp(1)SCC 327*).

14. When the evidence on record has been examined in great detail by the trial Court and the High Court to place reliance on the dying declaration, the conclusions cannot be in any way faulted.

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

…….J.
(Dr. ARIJIT PASAYAT)

…….J.
(ASOK KUMAR GANGULY)

New Delhi,
March 05, 2009