

PETITIONER:
THE STATE OF MADHYA PRADESH

Vs.

RESPONDENT:
MOHAN LAL & ORS.

DATE OF JUDGMENT: 07/05/1996

BENCH:
G.B. PATTANAIK (J)
BENCH:
G.B. PATTANAIK (J)
RAY, G.N. (J)

CITATION:
JT 1996 (5) 30 1996 SCALE (4)385

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

PATTANAIK, J.

This appeal by special leave is directed against the judgment and order dated 9.10.1983 passed by the High Court of Madhya Pradesh at Gwalior in Criminal Appeal No. 450 of 1983 arising out of Sessions Trial No. 96 of 1980.

The respondents were charged under Sections 302/149 as well as under Section 449 I.P.C. The respondents Mohan Lal and Chhagan Lal were further charged under Section 148 I.P.C. and rest of the respondents stood charged under Section 147 I.P.C. They were convicted under different counts by the Learned Additional Sessions Judge, Mandsaur for having killed the deceased Mangi Lal after dragging him out of his hut and thereafter assaulting him mercilessly and throwing acid on him. On appeal the High Court acquitted all the respondents and hence the present appeal.

The prosecution case briefly stated is that, on 18.9.1980 during night all the accused respondents being armed with gun, sticks and acid entered into the hut inside the field of Mangi Lal where Mangi Lal was sleeping. Respondents then dragged him out of the hut and some of them assaulted him by sticks and respondent Chhagan Lal who was carrying a gun assaulted him with the butt of the gun. Respondent - Mohan Lal threw acid on him. Deceased - Mangi Lal shouted for help. Having heard the noise, Abdul Rehman, PW. 1 who was staying at a distance of 100 yards, woke up and ran towards the place from where Mohan Lal's voice was coming. Reaching at the place of occurrence, when PW. 1 asked Mangi Lal about the incident, he told the names of the accused and told him that they have killed him by throwing acid. Said PW. 1 then informed Mangi Lal's family members and soon Mangi Lal's son Ram Gopal, PW. 4 arrived at the place of occurrence. Mangi Lal was then brought to the village in the injured condition and was carried on a tractor to Manasa Police Station. Mangi Lal himself lodged the report, which was treated as F.I.R. Exhibit P-32. It was

recorded by the Head Constable, PW. 14. After registering the case the police sent Mangi Lal to the hospital at Manasa where he was treated by doctor PW. 9. As the doctor was of the opinion that the condition of Mangi Lal was serious, the sub-inspector of Police, PW. 15 requisitioned the services of the Judicial Magistrate, Ist Class, Manasa, PW. 10 and requested him to record the dying declaration of said Mangi Lal. The said Magistrate immediately came to the hospital and on being satisfied by questioning the doctor that Mangi Lal was in a fit condition to make his statement, enquired from Mangi Lal about the incident and recorded his statement which was exhibited in the case as Exhibit P 15. The said statement was read out to Mangi Lal and hereafter Mangi Lal gave his thumb impression. Doctor PW. 9 then advised that Mangi Lal should be shifted to Mandsaur hospital. In accordance with the said advice, while Mangi Lal was carried to Mandsaur hospital he died on the way. Postmortem examination on his dead body was, however, conducted by the doctor PW. 2 and Postmortem report was exhibited as Exhibit P-3. The Investigating Officer in the meantime proceeded to the place of occurrence, made some seizure at the spot and finally on completion of investigation, submitted the charge sheet. On being committed, the accused persons were tried by the Learned Additional Sessions Judge. The prosecution examined as many as six witnesses of whom the most important witnesses are PW. 1, Abdul Rehman, who was the first person to arrive at the place of occurrence on hearing the shout of Mangi Lal and before whom Mangi Lal narrated the names of all the accused persons; PW. 14, the Head Constable at the Police Station who recorded the F.I.R.; report having been given by Mangi Lal himself PW. 15, the Investigating Officer who had visited the place of occurrence and made several seizure; the doctor PW. 9 who had first examined the injured Mangi Lal at the hospital at Manasa; the Magistrate PW. 10 who recorded the dying declaration of the deceased at 5.00 A.M. on 19.9.1990 and the doctor PW. 2 who conducted the Postmortem examination on the dead body of the deceased. The prosecution also examined PWs. 12, 13 and 14 to establish the animosity between deceased and Mohan Lal over the field for which police had taken action against them under Sections 107 and 116(3) of Code of Criminal Procedure. The plea of the accused persons was one of denial. The Learned Additional Sessions Judge on thorough scrutiny of the evidence on record and relying upon dying declaration recorded by the Magistrate, which was exhibited as Exhibit P-15 and finding out corroboration thereto from the oral declaration made by the deceased to PW. 1 as deposed to by PW. 1, as well as the medical evidence, came to the conclusion that the prosecution has been able to establish the charge against the accused persons beyond reasonable doubt and accordingly convicted them and sentenced them differently. All the accused persons were convicted under Sections 302/149 I.P.C. and were sentenced to imprisonment for life. Accused Mohan Lal and Chhagan Lal were further convicted under Section 148 and were sentenced to undergo rigorous imprisonment for two years. The rest of the accused persons were convicted under Section 147 and were sentenced to undergo rigorous imprisonment for one year. All the accused persons were further convicted under Section 449 and were sentenced to undergo rigorous imprisonment for seven years and it was directed that the sentences shall run concurrently. Being aggrieved by their conviction and sentence the accused person moved the High Court in appeal. The High Court though accepted the prosecution case that the

Judicial Magistrate, PW. 10 recorded the dying-declaration of deceased Mangi Lal, when said Mangi Lal was in a fit state of mind but since it had not been stated in the said dying declaration that the accused persons dragged Mangi Lal out of his house and assaulted. came to the conclusion that the occurrence having been taken place in mid-night inside the hut of the deceased, it was not possible for the deceased to identify the assailants and, therefore, the dying declaration does not inspire confidence. The High Court also lightly brushed aside the statement of PW. 1, Abdul Rehman to whom the deceased had not only stated the names of all the accused persons but had also stated that he was dragged out of the hut and was beaten and acid was thrown on him. With these conclusions the light Court set aside the conviction and sentences passed by the learned Additional Sessions Judge and acquitted all the accused persons.

Mr. Shukla learned senior counsel appearing for the State - appellant contended that the High Court set in law in discarding the dying declaration recorded by the Judicial Magistrate, PW. 10, on very flimsy grounds and thereby erred in law in acquitting the accused persons. Mr. Shukla, further contended that the deceased having given out the names of all the accused persons to PW. 1 who reached the place of occurrence while deceased was crying for help and further the deceased himself having gone to the Police Station and lodged the report giving a brief narration of the incident and the medical evidence being corroborative of the same, the conclusion is irresistible that the prosecution has been able to establish the charge beyond reasonable doubt and therefore the order of acquittal is wholly illegal. Mr. Sushil Kumar, learned senior counsel appearing for the respondents on the other hand contended that the dying declaration being the sole basis of conviction and for justifiable reasons the High Court having discarded the same and having acquitted the accused persons, said order of acquittal should not be interfered with by this Court. In support of the conclusion of the High Court that the dying declaration, Exhibit P-15, recorded by the Magistrate does not inspire confidence, Mr. Sushil Kumar submitted that the very fact that the deceased has not stated that he was brought outside being dragged and was assaulted and acid was thrown on him, could lead to the only conclusion that the assault was committed inside the hut and therefore under such circumstances, the occurrence having taken place in the mid-night, it will be wholly impossible to identify the assailants and consequently the said dying declaration has rightly been discarded by the High Court.

In view of the rival submissions at the bar the sole question that arises for consideration is whether the dying declaration made by the deceased and recorded by the Magistrate can be accepted and form the basis of conviction of the accused respondents? There cannot be any dispute with the proposition that a dying declaration can form the sole basis of conviction, though court look for corroboration from different circumstances since the same cannot be tested by cross-examination. Such declaration being made under a solemn sense of impending death, the deceased is usually not likely to commit any mistake and therefore the same is given great weight. But at the same time a court has the duty to scrutinize the same since the accused has no right of getting the statement tested by cross-examination. In the case of *Kundula Bala Subrahmaniyam and another vs. State of Andhra Pradesh*, (1993) 2 SCC 684, it has been field by this Court:

'Section 32(1) of the Evidence Act is an exception to the general rule that hearsay evidence is not admissible evidence and unless evidence is tested by cross-examination, it is not creditworthy. Under Section 32, when a statement is made by a person, as to the cause of death or as to any of the circumstances which result in his death, in cases in which the cause of that person's death comes into question, such a statement, oral or in writing, made by the deceased to the witness is a relevant fact and is admissible in evidence. The statement made by the deceased, called the dying declaration, falls in that category- provided it has been made by the deceased while in a fit mental condition. A dying declaration made by person on the verge of his death has a special sanctity as at that solemn moment, a person is most unlikely to make all, untrue statement. The shadow of impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the causes or circumstances leading to his death. A dying declaration, therefore, enjoys almost a sacrosanct status, as a piece of evidence, coming as it does from the mouth of the deceased victim. Once a statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the courts, it becomes a very important and a reliable piece of evidence and if the court is satisfied that the dying declaration is true and free from any embellishment such a dying declaration, by itself can be sufficient for recording conviction even without looking for any corroboration."

If the dying declaration is found to be true and voluntary and was made by a person concerned while he was in a fit condition to make the same then the same can be easily relied upon by the courts in convicting the accused persons even without any corroboration as has been held by this Court in K. Ramachandra Reddy and another vs. The Public Prosecutor, (1976) 3 SCC 618.

Bearing in mind the aforesaid legal principles let us now examine the dying declaration recorded by the Magistrate. Exhibit p-15, in the case in hand. But before focussing our attention on the same it would be appropriate to notice the injuries found on the deceased by the doctor, PW. 9, who treated' deceased Mangi Lal at the hospital at Marsasa as well as the injuries found by the doctor PW. 2, who had conducted the autopsy over the dead body of the

deceased. PW. 9 found the following 12 injuries:

"(1) On the left side of the skull 2" above the ear-on the parietal-region one open wound 1-1/2 long 1/8" wide and bone deep. There was slight scrapping on the bone in this wound. He had recommended X-Raying for this injury.

(2) On the left arm, 2" above the elbow on the outside, one lacerated wound, in which there was fracture of lower part of the humerus bone. Open wound was 1" long 1/4" wide and 1/2" deep. For this injury also he had recommended X-Ray examination.

(3) One more lacerated wound, about 3/4" above the injury No. 2 on the left arm, which was 1/2" long, 1/8" wide and 1/8" deep.

(4) On the back side of the left shoulder one contusion 4" x 1".

(5) One contusion 4" x 1" on left side of the back about 3" below the shoulder injury No. (4).

(6) 3" below the injury No. 5, one more contusion on the back 4" x 3/4", the inner part of this injury reaching upto the back bone.

(7) About 3" below the shoulder bone on the left side of the back, one more contusion 6" x 1/2".

(8) On the left hip, one oblique contusion 6" x 1'.

(9) On the left thigh, outwards, about 12" above the knee, one contusion 3" x 2".

(10) On the left thigh also, 1" above injury No. 9, in the side, one more contusion 4" x 3", in which a number of injuries appear to have been caused by stick blows.

"1. Compound fracture lower 1/3rd of left humerus.

2. Stitched wound 2", slightly oblique on left parietal region.

3. Lacerated wound 1" x 1/6", bone deep, on center of frontal region.

4. Lacerated wound 1/4" x 1/8" x 1/10" middle phalanx left middle finger.

5. Contusion 4 x 1" oblique left scapular region.

6. Contusion 3-1/2" x 1" oblique, left infra-scapular region.

7. Contusion 10" x 1' slightly oblique, left Thoracolumbar region.

8. Contusion 5" x 1" oblique, center of lower back.

9. Contusion 12" x 1/2" oblique, right scapular and infra-scapular region.

10. Contusion 7" x 1-1/2" on left lower back.

11. Contusion 3-1/2" x 1" left deltoid region.

12. Contusions 3" x 1" and 3" x 1" cross, middle of left upper arm.

13. Contusion 3-1/2" x 1-1/2" left elbow region.

14. Contusion 3" x 1" oblique, middle of left leg posterior aspect.

15. Contusion 3-1/2" x 1-1/2" upper third of left leg posterior aspect.

16. Contusions 2" x 1" and 2" x 1" oblique, lower 1/3rd of Right thigh posterior later aspect."

The said doctor had opined that the injuries had been inflicted before death and the death was caused by shock resulting from the various injuries and acid burns inflicted on the body. He also further opined that the death of the deceased could not possibly be caused by any single specific injury but the death could possibly result from the cumulative effect of all the injuries. Coming now to Exhibit P-15, the dying declaration recorded by the Magistrate, PW. 10, it is crystal clear from the prosecution evidence that when the injured reached the hospital at Manasa, the doctor PW. 9 noticed the condition of Mangi Lal to be serious. To the query of Balwant Singh Yadav, PW. 15, the doctor also stated that Mangi Lal was in a fit state of mind and fully capable of making any statement. PW. 15, therefore, took immediate steps, requisitioned the services of the Judicial Magistrate, Ist Class and the said Magistrate came to the hospital soon thereafter. The evidence of Magistrate, PW. 10 further indicates that he enquired from the deceased about his name, father's name, residential address and his age and then enquired from him about the incident and whatever he stated he recorded the same as per Exhibit P-15. The doctor who was present during recording of the statement of deceased by the Magistrate, gave the certificate that Mangi Lal was fully conscious and was in his sense after completing his declaration. The prosecution evidence also clearly establishes the fact that Mangi Lal was taken to the Police Station where he gave his statement immediately after the occurrence, which was treated as F.I.R. and was then taken to the hospital and shortly after reaching the hospital his statement was recorded by the Magistrate as stated earlier. In the aforesaid state of affairs the conclusion becomes irresistible that the deceased was in a fit state of mind to make the statement and he was making that statement without any influence or rancour. There was neither any possibility of tutoring or prompting by any other person. In this connection we will examine the contention of Mr. Sushil Kumar appearing for the respondents about the non-mentioning of the accused being dragged and assaulted outside which according to him would logically lead to the conclusion that the assault took place inside the hut and therefore the deceased could not have the opportunity of observing and identifying his assailants. It is no doubt true that in Exhibit P-15, the deceased has not stated about the accused persons dragging him out of hut and assaulting. But if the evidence of PW. 1. Abdul Rehman is examined it would appear that while the deceased was shouting for help after being assaulted by the accused persons when PW. 1 reached him, deceased had told him that Mohan Lal threw acid on him and along with Mohan Lal his so Ghanshyam, Bhanwar Singh Banjara, Chagga Telli, Sambhu Pattedar, Shambhu Bachera, Sanjay Bachera and Ramchander Bachera assaulted him and thereafter assailants threw acid. Though said PW. 1 has been cross-examined at great length but nothing has been elicited from him so as to impeach his testimony. He appears to us to be a truthful witness who has narrated whatever he heard from the deceased and whatever he saw at the place of occurrence. His evidence unequivocally indicates that place of assault was not inside the hut but was outside, after the deceased had been dragged from the hut. He has also stated in his evidence that it was a moonlit night. That apart the evidence of Investigating Officer, PW. 15 gives sufficient corroboration that the place of assault was not inside the hut but outside, after the accused dragged the deceased from his hut. When PW. 15 reached the place of occurrence he found marks of a person

being dragged on the ground from the hut upto the Mirch filed. He also found some scoreped plants which seemed to have been scorched by some acidic article and further he found burnt papers including a half burnt two rupee note. A glass bottle was also seen floating in the well containing some fluid.

The aforesaid evidence of PW. 15 clinches the matter that the assault as well as throwing of acid on Mangi Lal had taken place outside the hut in the Mirch filed of Mangi Lal after he was dragged from his hut. The F.I.R. which had been lodged by the deceased himself also indicates the state of affairs. Therefore, non-mentioning of being dragged and assaulted outside in Exhibit P-15 had rightly been appreciated by the Learned Additional Sessions Judge that due to the deteriorating condition of the deceased the omission might have taken place and the said omission is not fatal. In our opinion the High Court was wholly in error in discarding the voluntary statement of the deceased recorded by the Magistrate on flimsy grounds which cannot be sustained. Having examined the dying declaration made by the deceased and recorded by the Magistrate PW. 10 as well as the F.I.R. which had been lodged by the deceased prior to his death and the evidence of PW. 1, Abdul Rehman. to whom the deceased had narrated the incident immediately after the occurrence, we have no doubt in our mind that Exhibit P-15 is true and voluntary and had been made by the deceased while he was in a fit state of mind and there was no opportunity of either tutoring or prompting and as such the same can be easily pressed into service by the prosecution in proving the charges against the accused persons. That apart, the number of injuries found on the deceased as well as the acid injury on him corroborates the said dying declaration.

Mr. Sushil Kumar in course of his submissions had raised a contention that three of the accused persons Namely Ramchandra, Chhagan alias Sajan and Shambhu belong to a different village and there can be no justifiable reason for them to assault the deceased. But this submission in our considered opinion is devoid of any force, inasmuch as while discussing the evidence about the motive the Learned Additional Sessions Judge in paragraphs 59 to 62 of his judgment has clearly found out that all the accused persons belong to the rival group and had strained relations with the deceased on account of land cultivation and in the case that had been filed in the Court in Manasa, Ramchandra, Chhagan alias Sajan and Shambhu have been arrayed as accused along with Mohan Lal. It is no doubt true that the High Court has recorded the order of acquittal of the respondents but it would be travesty of justice, if this court does not interfere with such order of acquittal, where a gruesome murder has taken place and the High Court rejects a true and voluntary dying declaration recorded by a Judicial Magistrate by entering into realm of conjectures. We have gone through the evidence on record and for the reasons already stated we unhesitatingly come to the conclusion that the order of acquittal recorded by the High Court is wholly unwarranted and unjustified. The prosecution has proved the case against the accused - respondents beyond reasonable doubt. We accordingly set aside the judgment passed by the High Court and confirm the conviction and sentences recorded by the Learned Additional Sessions Judge. The accused - respondents who are on bail are directed to surrender to receive the balance period of sentence and if they fail to surrender, appropriate steps be taken for their arrest. This appeal is accordingly allowed.

JUDIS