

CASE NO.:
Appeal (crl.) 1166 of 2001

PETITIONER:
Dashrath @ Champa and Ors

RESPONDENT:
State of Madhya Pradesh

DATE OF JUDGMENT: 24/10/2007

BENCH:
Dr. ARIJIT PASAYAT & D.K. JAIN

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO.1166 of 2001

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of the Madhya Pradesh High Court at Jabalpur upholding the conviction of the appellants for offence punishable under Section 304 Part I read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC') and the award of sentence of 7 years rigorous imprisonment as awarded by the trial Court.

2. Prosecution version in a nutshell is as follows:
On the morning of 26th April, 1987 Ramesh (hereinafter referred to as the 'deceased') was returning from the house of Ismail Khan. He was waylaid by the three accused persons who attacked him with knife, lathi and rod. Ramesh sustained numerous injuries on his person. Rakesh Kumar and Bittu alias Gurdeo Singh intervened. The incident was witnessed by his mother Khargi Bai (PW-1), maternal grandmother Tulasa Bai (PW-22) and others. Ramesh was taken to the Police Station where he lodged the first information report (Ex.P.10) which was recorded by Head Constable Santosh Kumar (PW-20). Ramesh was immediately taken to the District Hospital at Bina where Dr. Rajnish Shrivastava (PW-11) examined him. He found as many as 18 injuries on his body as per his report Ex.P.16. Ramesh was admitted in the hospital. On the following day he was referred to District Hospital, Sagar for X-ray and further treatment. There he breathed last on 30.4.1987. Dr. M.C. Jain (PW-16) performed the autopsy on the next day. Postmortem report is Ex.P.28.

During the course of investigation knife article 'B' was recovered from the possession of accused Dashrath alias Champa on the basis of the information supplied by him. Accused Govind also made a disclosure statement leading to recovery of lathi article 'D' and accused Satish made a statement leading to the recovery of rod article 'C'.

On completion of investigation, a challan was put up against the three accused persons for commission of offence punishable under Section 302 read with Section 34 IPC.

3. The three accused persons were tried. Seven witnesses were examined as eye-witnesses to further the prosecution version. They included the mother (PW-1) and grand mother (PW-22) of the deceased. The other five eye-witnesses

produced were Laxmi Bai (PW-2), Asgari Begam (PW-4) and neighbours of the deceased and Santosh Singh (PW-17), Rakesh (PW-18) and Bittu (PW-19). But none of the witnesses admitted to having seen the incident. Therefore, the prosecution with the permission of the Court cross examined them. The trial Court was of the view that these witnesses were deliberately making false statements and concealing the truth. But the First Information Report (Ex.P10) was recorded by the Head Constable Santosh Kumar (PW-20) on the information given by the deceased. The said Head Constable had also recorded the statement of the deceased under Section 161 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.'). His statement is marked as Ex.P.32. Learned Additional Sessions Judge treated both the statements to be statements under Section 32(1) of the Indian Evidence Act, 1872 (in short the 'Evidence Act'). Relying on those statements and the medical evidence, the trial Court found that Ramesh had died as a result of the injuries inflicted upon him by the accused persons. But since none of the injuries was found on the vital organs of the deceased it was held that the offence committed was covered under Section 304 Part I IPC. The accused persons challenged correctness of the judgment before the High Court by filing an appeal which was dismissed by the impugned order.

4. Learned counsel for the appellants submitted that there was no material evidence to connect appellants with the crime and, therefore, both the trial Court and the High Court were not justified in finding the accused persons guilty. It is submitted that considering the nature of injuries sustained, it would have been impossible for the deceased to make any statement.

5. Learned counsel for the State on the other hand supported the judgments of the trial Court and the High Court.

6. The factual scenario as borne out from the records is that the deceased was brought to District hospital, Bina where he was admitted for observation and treatment. Dr. Rajnish Shrivastava (PW-11) found 18 injuries on his person. The doctor in cross examination stated that the deceased was examined by him at 1.00 p.m. in the afternoon on 26.4.1987. At that time the patient had not gone in shock. It was later that shocks started developing resulting in fall of blood pressure and vomiting as was recorded in bed head ticket (Ex. P.17). The observation was recorded at 5.00 p.m. on 26.4.1987. The deceased was admitted in District Hospital, Sagar. The bed head ticket (Ex.P.27) shows that he was admitted in the hospital at 11.15 p.m. on 27.4.1987 and in the bed head ticket the general condition was recorded to be satisfactory and also that he was conscious. The deceased breathed his last three days later on 30.4.1987.

7. Though PWs. 18 and 1 stated that the deceased was unconscious, PW-22 stated that he was in senses. It was also stated by this witness that the deceased had lodged the report. She also stated that the police had recorded the statement of the deceased. Though some of the witnesses resiled from the statements made during investigation, PW-19 stated that he and Ramesh's mother carried him to the police station.

8. Santosh Kumar, Head Constable (PW-20) had testified that the deceased was fully conscious when he was brought to the police chowki and it was the deceased who had lodged the

complaint which was recorded by him. The statement of the deceased was marked as Ex.P.32. The trial Court and the High Court relying on the evidence of PW-20 concluded that the statement given by the deceased was to be treated as a dying declaration. The bed head ticket of District Hospital, Sagar, (Ex.P.27) shows that when the deceased was brought he was conscious and his general condition was satisfactory. These materials were sufficient to discard the stand of the accused persons that the deceased was unconscious when he was brought to the hospital. As the deceased died on 30.4.1987 the trial Court and the High Court treated the first information report (Ex. P.10) to be in the nature of the dying declaration; so was the statement of the deceased (Ex.P.32). In both these statements the three accused persons have been named as the assailants. The trial Court and the High Court analysed the evidence in great detail and found that the prosecution established its stand because of the dying declaration.

9. At this juncture, it is relevant to take note of Section 32 of the Evidence Act, which deals with cases in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant. The general rule is that all oral evidence must be direct viz., if it refers to a fact which could be seen it must be the evidence of the witness who says he saw it, if it refers to a fact which could be heard, it must be the evidence of the witness who says he heard it, if it refers to a fact which could be perceived by any other sense, it must be the evidence of the witness who says he perceived it by that sense. Similar is the case with opinion. These aspects are elaborated in Section 60. The eight clauses of Section 32 are exceptions to the general rule against hearsay just stated. Clause (1) of Section 32 makes relevant what is generally described as dying declaration, though such an expression has not been used in any Statute. It essentially means statements made by a person as to the cause of his death or as to the circumstances of the transaction resulting in his death. The grounds of admission are: firstly, necessity for the victim being generally the only principal eye-witness to the crime, the exclusion of the statement might deflect the ends of justice; and secondly, the sense of impending death, which creates a sanction equal to the obligation of an oath. The general principle on which this 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 the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a Court of justice. These aspects have been eloquently stated by Lyre LCR in *R. v. Wood Cock* (1789) 1 Leach 500. Shakespeare makes the wounded Melun, finding himself disbelieved while announcing the intended treachery of the Dauphin Lewis explain:

view, "Have I met hideous death within my
Retaining but a quantity of life,
Which bleeds away even as a form of wax,
Resolveth from his figure 'gainst the fire?
What is the world should make me now deceive,
Since I must lose the use of all deceit?
Why should I then be false since it is true

That I must die here and live hence by truth?"
(See King John, Act 5, Sect.4)

10. The principle on which dying declaration is admitted in evidence is indicated in legal maxim "nemo moriturus proesumitur mentiri" & a man will not meet his maker with a lie in his mouth."

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 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 veracity of his statement. It is for this reason 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.

12. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no scope of cross-examination. Such a scope 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 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 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 not 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 deceased was in a fit mental condition to make the dying declaration look 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 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 (AIR 1982 SC 839)]

13. In the light of the above principles, the acceptability of 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 basis of conviction, even if there is no corroboration. [See Gangotri Singh v. State of U.P. (JT 1992 (2) SC 417), Goverdhan Raoji Ghyare v. State of Maharashtra (JT 1993 (5) SC 87), Meesala Ramakrishnan v. State of Andhra Pradesh (JT 1994 (3) SC 232) and State of Rajasthan v. Kishore (JT 1996 (2) SC 595)].

14. There is no material to show that dying declarations were result of product of imagination, tutoring or prompting. On the contrary, they appear to have been made by the deceased voluntarily. It is trustworthy and has credibility.

15. In view of the factual scenario as analysed in the background and the principles set out above the inevitable conclusion is that the trial Court and the High Court were justified in finding the accused persons guilty. There is no merit in this appeal which is dismissed accordingly. The appellants who are on bail shall surrender to custody forthwith to serve remainder of sentence, if any.