

CASE NO.:
Appeal (crl.) 130 of 2006

PETITIONER:
Mehiboobsab Abbasabi Nadaf

RESPONDENT:
State of Karnataka

DATE OF JUDGMENT: 01/08/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

1. Appellant herein is the husband of the deceased Hussainbi. They were living at a village known as Dodwad. On 29.05.2004 at about 11.00 a.m., the appellant is said to have asked the deceased to put a shirt on their son Inayat. She allegedly did not do so. Appellant is said to have assaulted her with a broomstick. She was also allegedly abused by her mother-in-law and father-in-law. When allegedly she had fallen down, the accused No. 3 (mother-in-law) brought a wick stove and poured kerosene on her body and the accused No. 2 (father-in-law) ignited the matchstick setting her on fire. She suffered serious burn injuries. She was taken to the District Hospital. She was later on shifted to KLE Hospital Belgaum where she succumbed to her injuries on 3.06.2004.

All the prosecution witnesses viz., PWS 1 to 7 and 9 to 12 who were material to prove the prosecution case turned hostile. Even her own parents, brothers and sister-in-law did not support the prosecution case. Appellant and his parents, however, who stood their trial for commission of murder of the deceased Hussainbi, were convicted for commission of the alleged offence under Section 302/34 of the Indian Penal Code relying on or on the basis of the dying declarations allegedly made by the deceased. The High Court, however, by reason of the impugned judgment while holding that the deceased suffered a homicidal death opined that despite the clear statement made by the deceased attributing the act of abusing her, pouring kerosene oil on her and setting her fire by parents-in-law acquitted them, while upholding the judgment of conviction passed by the learned Sessions Judge against the appellants, stating:

\023\0050n reading both the dying declarations, though we find there is possibility of the accused Nos. 2 and 3 also taking part in the ghastly act, the second dying declaration having excluded their participation in setting her on fire, benefit of doubt has to be given to the accused Nos. 2 and 3. This is also in view of the fact that Ex. P22 dying declaration recorded by the A.S.I. shows an attempt by the accused No. 2 to extinguish the fire by pouring water on her. Taking into consideration all these factors, we find that the prosecution has proved the guilt of the accused No. 1 to the hilt. But as regards the accused Nos. 2 and 3, the circumstances create doubt about the participation of those two persons and the benefit has to be given to them.\024

2. A short question which arises for consideration before us is as to

whether having regard to the contradictory and/ or inconsistent stands taken by the deceased in her dying declarations, the impugned judgment can be sustained in law.

3. The deceased had made four dying declarations; two before the medical officers, one before the Executive Magistrate and one before the police officer. In her statements before the medical officers, she alleged that while she had been cooking in her house in the morning at 11.00 hours on 29.05.2005, accidentally, the stove burst and she sustained burn injuries. In her dying declaration recorded by Parappa Gurappa Thotagi, ASI Doddawada Police Station on 30.05.2004 at about 8.30 a.m., she alleged:

\023I have been married with Sri Mehbooba Saheb Mamadapur 6 years ago. I have three children. My husband is a driver. He was again and again troubling me, beating me. My mother-in-law, father-in-law and husband were forcing me to bring golden chain. They have been giving harassment to me in this manner. On 29.05.04, in the morning at about 9.30 when I was in the house again my father-in-law, mother-in-law and husband started abusing me. My husband trashed me on my back. As soon as I fell down, they poured kerosene which was in the stove on my body and by lightening the match box they burnt me. I do not know what happened thereafter. Now I came to know that I have come to KLE Hospital and am availing medical treatment here. I came to know that my body has been fully burnt. As my husband, father-in-law and mother-in-law are responsible for pouring kerosene and burning me. I am giving this statement for getting appropriate punishment to my father-in-law, mother-in-law and to my husband and written on my telling and heard.\024

4. Yet in another purported dying declaration made by the deceased, which was recorded on 31.05.2004 by the Executive Magistrate, she alleged:

\023That on 29.05.04 in the morning at about 11 o'clock when I was in the home, my husband Mehabooba asked to put a shirt to Inayetha. I refused to do so. By saying that I have not obliged his words, he took the broom stick lying there and started to trashing me from its handle on my back. By then I fell down. My father-in-law Abbas Ali and mother-in-law Gorima both abusing me took the stove which was then (sic) and poured the kerosene from it and put fire. Because of the burning inflation I started shouting and rushed towards bath room. By then my husband and father-in-law poured water on my body as my body was burning high, they brought me out from my house. The people in the lane gathered by then. My husband brought vehicle over there. The elders in our lane Rajasaheb Nadaf and Hubballi Rajesab and my husband brought me to Dharavada Government Hospital for treatment\005\024

5. We have been taken through the evidence of PW13 Dr. Balappa Basappa Oni, PW14 Dr. Rajashekara Chennabasappa Angadi and PW16 Parappa Gurappa Thotagi before whom the aforementioned purported dying declarations were made. From a bare perusal of their depositions in regard

to recording dying declarations of the deceased, it is evident that whereas in one, she attributed the incident to have taken place accidentally, in another, attributed the act of abusing and setting her on fire on her parents-in-law and only in one of the dying declarations she attributed the act of pouring kerosene and lighting the same leading to her death on all the accused.

6. Conviction can indisputably be based on a dying declaration. But, before it can be acted upon, the same must be held to have been rendered voluntarily and truthfully. Consistency in the dying declaration is the relevant factor for placing full reliance thereupon. In this case, the deceased herself had taken contradictory and inconsistent stand in different dying declarations. They, therefore, should not be accepted on their face value. Caution, in this behalf, is required to be applied.

7. Mr. Sanjay R. Hegde, learned counsel appearing on behalf of the State, however, submitted that the entire act of abusing, beating and setting the deceased on fire constitutes one transaction. Assuming the same to be so, keeping in view the fact that in two of the dying declarations, the deceased attributed the acts primarily on her parents-in-law and they having been acquitted, it is difficult to hold that the appellant alone was responsible for causing her death.

8. In Mohammed Arshad v. State of Maharashtra & Ors. [2006 (12) SCALE 370], this Court opined as under:

\023So far as the appeal preferred by Mohammed Ashraf is concerned, we are of the opinion that he is entitled to benefit of doubt. He was not named in the first two dying declarations. He was named only in the 3rd dying declaration. No injury by stick was found on the back of the deceased. The motive ascribed as against him did not find place in the First Information Report. Evidently, the deceased made improvement in his 3rd dying declaration before the Police Officer.

Keeping in view the backdrop of events, we fail to see any reason as to why appellant Mohammed Arshad would not have been named in the 1st or 2nd dying declarations if the motive for his involvement was non-payment of a sum of Rs.60,000/- as was disclosed by the deceased.

This Court in Balbir Singh & Anr. vs. State of Punjab [2006 (9) SCALE 537] relying upon several decisions of this Court including State of Maharashtra vs. Sanjay s/o Digambarrao Rajhans [(2004) 13 SCC 314] and Muthu Kutty & Anr. vs. State by Inspector of Police, T.N. [(2005) 9 SCC 113] held :

\023We are of the opinion that whereas the findings of the learned Sessions Judge as also the High Court in regard to guilt of Appellant No.1 must be accepted, keeping in view the inconsistencies between the two dying declarations, benefit of doubt should be given to Appellant No.2. We, however, uphold the conviction and sentence of both the Appellants under Section 498-A IPC.\024

9. We are not oblivious that in Maniben W/O Danabhai Tulshibai Maheria v. State of Gujarat [2007 (7) SCALE 93], this Court relied upon the dying declarations but consistent statements had been made by the deceased therein.

10. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. Appellant, who is in custody, shall be released forthwith, if not required in connection with any other case.

JUDIS