K. Ramachandra Reddy and Another

Vs

The Public Prosecutor

Civil Appeal No. 143 of 1975

(A.C. Gupta, Syed M. Fazal Ali JJ)

05.05.1976

JUDGMENT

FAZAL ALI, J. -

1. Five accused persons, namely, accused No. 1 K. Ramachandra Reddy, No. 2, Manne Sreehari, No. 3 Prabhakar Reddy, No. 4 Sudhakara Reddy and No. 5 Bhaskar Reddy were put on trial in the court of First Additional Sessions Judge, Nellore under Sections 147, 148, 302/149 and 302/34 I.P.C. for having caused the murder of the deceased Venugopala Reddy resident of Rachakandrika village of Nellore district. The learned Sessions Judge after recording the evidence of the prosecution and hearing the arguments rejected the entire prosecution case and held that the prosecution had miserably failed to prove the case against any of the accused and he accordingly acquitted all the five accused by his judgment dated July 25, 1973. The State of Andhra Pradesh thereafter filed an appeal under Section 417 of the Code of Criminal Procedure against the order of acquittal passed by the learned Additional Sessions Judge, Nellore. The appeal was heard by a Division Bench of the Andhra Pradesh High Court which reversed the order of acquittal passed by the learned Sessions Judge only in respect of accused Nos. 1 and 2 convicted them under Section 302/34 I.P.C. and sentenced them to imprisonment for life. The acquittal of the other accused Nos. 3 to 5 was confirmed by the High Court. The two appellants namely K. Ramachandra Reddy and Manne Sreehari to be referred to hereafter as accused Nos. 1 and 2 respectively have filed the present appeal in this Court under Section 2A of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act of 1970.

2. A perusal of the judgment of the High Court clearly reveals that the learned Judges have not accepted the major part of the evidence adduced by the prosecution in support of the case against the accused and have founded the conviction of the accused Nos. 1 and 2 solely on the basis of Ext. P-2 a dying declaration alleged to have been made by the deceased Venugopala Reddy at Dr. Ramamurthi Nursing Home before a magistrate the next day after he is said to have been assaulted. The High Court on a careful reading of the dying declaration held that it was a truthful version of the manner in which the deceased was assaulted by the accused and as the deceased had made a full disclosure to a magistrate in the presence of a doctor who had testified to the fact that the deceased was in a fit state of mind to make a statement there was no reason to disbelieve the dying declaration which the High Court believed to be genuine and true.

3. The arguments of the learned Counsel for the appellants naturally centred round the reliability of Ext. P-2 the dying declaration recorded by the magistrate at the nursing home. Appearing for the appellants Mr. Debabrata Mookerjee submitted two propositions before us :

(1) that the High Court in reversing the acquittal of the appellants completely overlooked the principles laid down by this Court that the High Court ought not to interfere with an order of acquittal in appeal without displacing the reasons given and the circumstances relied upon by the trial Court and certainly not in a case where two views are possible; and

(2) that the High Court failed to consider the suspicious circumstances under which the dying declaration was made which went to show that it was not a voluntary or true disclosure by the deceased but was the result of tutoring and prompting by his relations.

4. On the other hand Mr. Ram Reddy the senior standing counsel for the State of Andhra Pradesh submitted that the High Court was fully justified in relying upon the dying declaration which was both true and voluntary and whose correctness had been testified by the magistrate and the doctor. The learned Counsel also relied on some other evidence in order to corroborate the genuineness of the dying declaration.

5. Before examining the contentions raised by counsel for the parties, it may be necessary to give a resume of the prosecution case shorn of its essential details. It appears that there was serious political rivalry between Bhaskar Reddy A-5 and the deceased Venugopala Reddy over the election of the local panchayat committee known as Samithi. It appears that some allegations of misappropriation of public funds having been made against accused No. 5 Bhaskar Reddy the deceased displaced him from the Presidentship of the Panchayat Samithi in a meeting, called a few days before the death of the deceased where Bhaskar Reddy was not invited. This is supposed to have provided an immediate provocation for the accused to have attacked the deceased. According to prosecution the deceased had gone to his petrol pump in Tada Bazar and after sunset was leaving for his village through the main highway and after having traversed about half a mile when he reached the place of occurrence situate near the mango grove he was surrounded by the five accused who pounced upon him and assaulted him with stones, knives and sticks. Venugopala fell down and the accused ran away after assaulting him. P.Ws 5 and 6 who were keeping watch over the mango grove were attracted to the scene of occurrence by the cries of the deceased and PW 5 was sent by PW 6 to the village Pachakandrika to call the relations of the deceased. The errand entrusted to PW 5 having been executed PW 1 the son of the deceased and PW 2 his cousin arrived at the spot and found the deceased in a sitting posture being attended to by PW 6 with a large number of injuries on his person. In fact it would appear from the post mortem report that the deceased had sustained as many as 48 injuries on his person. It is further alleged by the prosecution that PW 1 asked his father regarding the occurrence and the deceased disclosed the names of accused Nos. 1 to 5 as his assailants. Thereafter the deceased was taken in a lorry to the nursing home of Dr. Ramamurthi at Nellore and PW 7 sarpanch of the village and a very close and intimate friend of the deceased also accompanied the deceased in the lorry upto Nellore. Dr. Ramamurthi had gone to a cinema but on being sent for the arrived at the nursing home and attended to the deceased. He directed PW 1 to rush to the police station at Sullurpet to report the occurrence. PW 1 went to Sullurpet and reported the matter to the Sub-Inspector who made a station diary entry Ext. D-4. The Sub-Inspector, however, did not choose to register the case on the basis of the diary entry but proceeded to Nellore. We would like to mention here that Ext. D-4 was the real F.I.R. in the case within the meaning of Section 154 Cr. P.C. and the Sub-Inspector committed a dereliction of duty in not registering the case on receiving the first information report about the death of the deceased from PW 1 the son of Venugopala Reddy. We might also mention that the Sub-Inspector PW 15 was also a friend of the deceased being his class-fellow. It may be pertinent to note here that although a report was made by

PW 1 to the Sub-Inspector yet the names of the appellants were not at all mentioned in the station diary entry which was based on the verbal report given by PW 1. No reason or explanation seems to have been given by the prosecution for the non-disclosure of the names of the appellants by PW 1 if in fact he had been told these names by the deceased himself at the spot. When the Sub-Inspector PW 15 reached the nursing home he was asked by the doctor PW 17 to get a magistrate so that the dying declaration of the deceased may be recorded. Acting upon the instructions of PW 17 the Sub-Inspector went to the magistrate PW 11 who arrived at the nursing home and recorded the dying declaration of the deceased which is Ext. P-2 in the case and which forms the basis of the conviction of the two appellants. Thereafter in view of the critical condition of the deceased Dr. Ramamurthi advised that the deceased should be taken to the Madras General Hospital and accordingly the relations of the deceased took the deceased to the Madras General Hospital where also he is said to have made another dying declaration before the police. This dying declaration, however, was rejected both by the Sessions Judge and the High Court and it is not necessary for us to refer to this part of the evidence. Even the oral dying declaration said to have been made by the deceased to PWs. 1 and 2 and others also has not been accepted either by the Sessions Judge or by the High Court.

6. The accused pleaded innocence and averred that they had been falsely implicated due to enmity. Thus it would appear that the conviction of the accused depends entirely on the reliability of the dying declaration Ext. P-2. The dying declaration is undoubtedly admissible under Section 32 of the Evidence Act and not being a statement on oath so that its truth could be tested by cross-examination, the courts have to apply the strictest scrutiny and the closest circumspection to the statement before acting upon it. While great solemnity and sanctity is attached to the words of a dying man 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 yet the court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of his imagination. The court must be satisfied that the deceased was in a fit state of mind a make the statement after the deceased had a clear opportunity to observe and identify his assailants and that he was making the statement without any influence or rancour. Once the court is satisfied that the dying declaration is true and voluntary it can be sufficient to found the conviction even without any further corroboration. The law on the subject has been clearly and explicitly enunciated by this Court in Khushal Rao v. State of Bombay (1958) SCR 552 : AIR 1958 SC 22 : 1958 Cri LJ 106) where the Court observed as follows :

> On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Court in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of Madras High Court, aforesaid, (1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstance and with reference to the principles governing the weighing of evidence; (5) that a dying declaration which has been recorded by a competent magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the

> infirmities of human memory and human character, and (6) that in order to test the reliability of a dying declaration, the court has to keep in view the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night, whether the capacity of the man to remember the facts stated had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.

Hence, in order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination.

The above observations made by this Court were fully endorsed by a Bench of five Judges of this Court in Harbans Singh v. State of Punjab (1962 Supp 1 SCR 104 : AIR 1962 SC 439 : (1962) 1 Cri LJ 479). In a recent decision of this Court in Tapinder Singh v. State of Punjab ((1971) 1 SCR 599 : (1970) 2 SCC 113), relying upon the earlier decision referred to above, this Court observed as follows : [SCC p. 119, para 5]

> It is true that a dying declaration is not a deposition in court and it is neither made on oath nor in the presence of the accused. It is, therefore, not tested by cross-examination on behalf of the accused. But a dying declaration is admitted in evidence by way of an exception to the general rule against the admissibility of hearsay evidence, on the principle of necessity. The weak points of a dying declaration just mentioned merely serve to put the court on its guard while testing its reliability, by imposing on it an obligation to closely scrutinise all the relevant attendant circumstances.

In Lallubhai Devchand Shah v. State of Gujarat ((1971) 3 SCC 767 : 1972 SCC (Cri) 13), this Court laid special stress on the fact that one of the important tests of the reliability of a dying declaration is that the person who recorded it must be satisfied that that the deceased was in a fit state of mind and observed as follows : [SCC p. 772 : SCC (CRI) p. 18, para 9]

> The Court, therefore, blamed Dr. Pant for not questioning Trilok Singh with a view to test whether Trilok Singh was in a "fit state of mind" to make the statement. The "fit state of mind" referred to is in relation to the statement that the dying man was making. In other words, what the case suggests is that the person who records a dying declaration must be satisfied that the dying man was making a conscious and voluntary statement with normal understanding.

7. We would now examine the dying declaration Ext. P-2 in the light of the principles enunciated above. To begin with, we would like to deal with the surrounding circumstances and the attendant factors which culminated in the dying declaration Ext. P-2 made by the deceased at Dr. Ramamurthi Nursing Home. According to the prosecution there were three clear occasions when the deceased was conscious and could have made a statement disclosing the names his assailants. The first occasion was at the place of occurrence itself, after the deceased is said to have been assaulted by the accused. The persons who were present on this occasion were PWs. 1, 2, 5 and 6. According to PW 1. (p. 5 of the printed paper book) the deceased even though he was groaning was in a condition

to speak out and on being questioned he narrated the entire occurrence and disclosed the names of the five accused persons to PW 1. The fact that the deceased had mentioned the names of all the accused to this witness has been disbelieved by both the court and in our opinion rightly, because PW 1 did not make any mention of this fact either in the F.I.R. Ext. D-4 or in his statement to the police. Nevertheless from the statement of PW 1 who is the son of the deceased it is manifestly clear that the deceased was in a position to make a statement and yet he did not disclose the names of the assailants. Similarly PW 2 (p. 15 of the printed paper book) categorically states that in his presence PW 1 asked the deceased as to how the incident took place and the deceased told him that all the five accused had assaulted him wish sticks, stones and knives and then ran away. This also shows that the deceased was conscious when he is said to have made this statement. Lastly, there is the evidence of PW 6 (p. 29 of the paper book) who also says that although the witness could not hear what the deceased said yet he was speaking very slowly with his son. Thus at the first stage, namely, when the deceased was at the spot he was in a position to make the statement and yet, according to the findings of the courts below, he did not disclose the names of the assailants to anybody.

8. The second occasion when the deceased could have disclosed the names of his assailants was at the time when he was carried in a lorry from the place of occurrence to Dr. Ramamurthi Nursing Home. PW 1 (p. 8 of the printed paper book) categorically states that at the time when his father was put on the lorry he was groaning but he was in a position to talk. The witness further goes on to state that none of the 20 to 30 persons who had gathered at the scene tried to ask the deceased as to how the incident took place. Similarly PW 6 (p. 29 of the printed paper book) clearly stated the injured was in a position to talk while he was being put on the lorry and about 50 to 60 persons were present there at that time.

9. The third occasion when the deceased could have disclosed the names of the assailants was when he reached the nursing home. In this connection PW 1(p. 9 of the printed paper book) has stated that on reaching the hospital the doctor was sent for and at that time his father was conscious and was in a position to talk though he was groaning with pain. He further admitted that he did not tell the doctor what his father had told him. Similarly PW 2 states (at p. 16 of the printed paper book) that when the Sub-Inspector of Sullurpet came and saw the injured in the room of the nursing home the injured was in a position to talk but the Sub-Inspector did not talk to him or question him on anything. PW 15 the Sub-Inspector of Sullurpet states (at p. 41 of the printed paper book) that he found about 20 persons at the nursing home gathered outside the nursing home and saw Dr. Ramamurthi attending on the injured inside when the injured was in a conscious state.

10. From the evidence discussed above, it is clearly established that although the deceased was conscious at the place of occurrence, at the time when he was put on the lorry and also at the time when he was brought to the nursing home and was in a position to speak he did not disclose the names of the assailants to anybody. This conduct of the deceased can be explained only on two hypotheses, namely, either the deceased was not conscious at all and was not in a position to talk to anybody or that even though he was conscious he did not disclose the occurrence to anybody because under the stress and stain of the assault, which took place admittedly at a time when darkness had set in and there was very little moonlight, he was not able to identify the assailants. No third interference can be spelt out from the conduct of the deceased in not disclosing the names of the assailants on these three occasions Furthermore, the fact that the deceased was not in a position to identify the assailants receives intrinsic support from the statement of PW 1 (at p. 6 of the printed paper book) where he clearly states that he had seen A-3, A-4 and A-1 at A-5's house about five years before the occurrence. He further states that he did not know if his father knew A-1, A-3 and A-4 well and by their names. He further states that A-3 had visited his house five years ago and he

could not say whether his father was present at that time. Lastly the witness states that he had no other acquittance with A-3 and A-4. He also states that he came to know A-2 only after the occurrence of this case. The learned Sessions Judge has rightly relied on these circumstances to come to that the deceased did not know the names of the accused nor was he able to identify them in the darkness and this introduces a serious infirmity in the dying declaration itself. It would be seen that in dying declaration Ext. P-2 the name of the accused No. 1 Ramachandra Reddy is clearly mentioned and so is the name of accused No. 2. If according to PW 1 there was a clear possibility of the deceased not having known the names of A-1, A-2 or A-3 then it is not understandable how these names could be mentioned by the deceased in his dying declaration unless the names were suggested to him by somebody. Against this background the presence of PW 2 the cousin of the deceased by his side even at the time when the dying declaration was recorded or a little before that clearly suggests that the possibility of prompting cannot be excluded. Even the High Court has clearly found that the possibility of prompting was there.

11. Dr. Ramamurthi PW 17 has stated that while the magistrate was recording the statement of the injured, was sitting for a while and was thereafter lying on the lap of PW 2 who was nursing him then. Another important circumstance that has been considered by the learned Sessions Judge but overlooked by the High Court is that even though according to the evidence led by the prosecution the deceased was fully conscious in the hospital and had met persons from his village, his friends and acquaintances including Dr. Ramamurthi PW 17 and the Sub-Inspector PW 15 yet he did not make any statement to any of these persons nor did any of these persons try to question the deceased about the occurrence. In fact the categorical evidence of PW 17 Dr. Ramamurthi is that from the time the patient was brought in the nursing home till the magistrate arrived, the patient did not talk to anyone including him. The learned Sessions Judge has observed that this is a very extraordinary and unnatural circumstance which throws a good deal of doubt on the circumstances in which the dying declaration was recorded. The doctor was known to the deceased and yet neither the deceased talked to him nor did the doctor make any inquiry from him. On the other hand PW 15 the Sub-Inspector has stated (at p. 42 of the printed paper book) that when the deceased had reached the hospital he was not in a position to talk and was groaning. PW 17 Dr. Ramamurthi has also stated that the state of mind of the deceased was restlessness. He further deposed that till the magistrate arrived, the witness had no opportunity to assess the mental capacity of the injured Venugopala Reddy. It would appear from the evidence of PW 20 who made the post mortem that there were as many as 48 injured on the person of the deceased out of which there were 28 incised wounds on the various parts of the body including quite a few gaping incised injuries. In view of these serious injuries we find it difficult to believe that the deceased would have been in a fit state of mind to make a dying declaration. The magistrate PW 11 who recorded the dying declaration had admitted that the injured was suffering from pain and he was not in a position to sign and so his thumb impression was taken. The magistrate further admitted that the injured was taking time to answer the questions. The magistrate further admitted that the injured was very much suffering with pain. In spite of these facts the magistrate appears to have committed a serious irregularity in not putting a direct question to the injured whether he was capable mentally to make any statement. In the case of Lallubhai Devchand Shah referred to by us (supra) the omission of the person who recorded the dying declaration to question the deceased regarding his state of mind to make the statement was considered to be very serious one and in our opinion, in the instant case the omission of the Judicial Magistrate who knew the law well throws a good deal of doubt on the fact whether the deceased was really in a fit state of mind to make a statement. The Sessions Judge has rightly pointed out that even though the deceased might have been conscious in the strict sense of the term, there must be reliable evidence to show, in view of his intense suffering and serious injuries, that he was in a fit

state of mind to make a statement regarding the occurrence. Having regard, therefore, to the surrounding circumstances mentioned above, which have not been fully considered by the High Court, we find it extremely unsafe to place any reliance on Ext. P-2 particularly in view of the conduct of the deceased in not making any disclosure regarding the occurrence on the three previous occasions when he had a full and complete opportunity to name his assailants.

12. Lastly it is admitted that there was serious enmity between the parties. PW 2 states (at p. 16 of the printed paper book) that there were ill-feelings between the deceased and A-1, A-2 to A-5. While Counsel for the State has submitted that the deceased was assaulted due to enmity, the possibility cannot be ruled out that the accused may have been named because of the enmity. The learned Standing Counsel for the State relied upon the statement of Dr. Ramamurthi who had given the certificate that the deceased was in fit state of mind to make a statement. This certificate by itself would not be sufficient dispel the doubts created by the circumstances mentioned by us and particularly the omission by the magistrate in not putting a direct question to the deceased regarding the mental condition of the injured when he was satisfied that the injured was suffering from severe pain and was not able to speak normally. For these reasons, therefore, this case clearly falls within principles (5) and (6) laid down by this Court in Khushal Rao's case (supra). In these circumstances we feel that it would be wholly unsafe to found the conviction of the appellants on the basis of Ext. P-2.

13. Mr. P. Ram Reddy for the State submitted that Ext. P-2 was corroborated by the presence of at least accused No. 1 near the petrol pump slightly before the occurrence took place. The presence of accused No. 1 in Tada Bazar near his village is not completely inconsistent with his guilt and being a resident of the village close by his presence in the bazar can be explained on account of various reasons. It was then submitted that the accused had been absconding. The accused, however, surrendered within 14 days and this is not a circumstance which can outweigh the effect of the suspicious circumstances under which the dying declaration was made. It seems to us that as the deceased did not know the names of the appellants nor did he know them from before he was not able to identify his assailants and the names were supplied by PW 2 his cousin just before the dying declaration was made. Putting the prosecution case at the highest, there can be no doubt that the view taken by the learned Sessions Judge that the dying declaration did not amount to a truthful disclosure cannot be said to be against the weight of the evidence on the record and even if the High Court was in a position to take a view different from the one taken by the Sessions Judge on the same evidence, this would not be a ground for reversing the order of acquittal. In Ram Jag v. State of U. P. ((1974) 3 SCR 9 : (1974) 4 SCC 201 : 1974 SCC (Cri) 370) this Court observed as follows : [SCC p. 207 : SCC (CRI) p. 376, para 13]

> Such regard and slowness must find their reflection in the appellate judgment, which can only be if the appellate Court deals with the principal reasons that influenced the order of acquittal and after examining the evidence with care gives its own reasons justifying a contrary view of the evidence. It is implicit in this judicial process that if two views of the evidence are reasonably possible, the finding of acquittal ought not a disturbed.

Thus in the instant case as two views were reasonably possible and therefore the High Court was in error in disturbing the order of acquittal passed by the Sessions Judge.

14. For the reasons given above, we are satisfied that the High Court was not at all justified in reversing the order of acquittal passed by the Session Judge. The appeal is accordingly allowed, the

conviction and sentence passed against the appellants are set aside and they are acquitted of the charges framed them. The appellants are directed to be set at liberty forthwith.

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