

Ramawati Devi

Vs

State of Bihar

Criminal Appeal No. 358 of 1975

(R.S. Pathak, A.N. Sen JJ)

05.01.1983

JUDGMENT

AMARENDRA NATH SEN J. –

1. The appellant was convicted under the Section 302 of the Indian Penal code and Sentence to undergo imprisonment for life by the Sessions Judge Arrah. Against his conviction the appellant preferred an appeal to the High Court at Patna. The High Court by its judgment and order dated February 12, 1975 dismissed the appeal and upheld the conviction of the appellant. Against the judgment and order of the High Court, the appellant has filed this appeal with special leave granted by this Court.
2. The case of the prosecution may be briefly stated : On October 30, 1967 at about 5 a.m. Sabitri Devi deceased, (for whose murder the appellant has been convicted) of village Pakri, Police Station Bihiya had gone to the house of the appellant who is also the resident of the same village to take back her ornaments and a sum of Rs. 500 in cash which Sabitri Devi had kept with the appellant for safe custody during the temporary absence of the Sabitri Devi's mother. The appellant refused to return the ornaments and the cash which were said to be kept in the safe custody and it is alleged that she sprinkled kerosene on the cloths of Sabitri Devi and set fire to the same. Sabitri Devi therefore started running in flames towards her house and fell down on the road. While running she had been screaming and shouting that the appellant had not returned the ornament and cash when demanded and had set fire to her clothes after sprinkling kerosene on the same. Sabitri Devi was thereafter removed to Arrah Sadar Hospital where Assistant Inspector of Police attached to Arrah Police Station recorded the statement of Sabitri Devi. This Fard-beyan of Sabitri Devi was sent to Bihiya Police Station. Sabitri Devi died in the Arrah Sadar Hospital on that very day at 9.30 a.m. There was the usual commitment enquiry under Chapter 18 of the code of the Criminal Procedure and the learned Magistrate who conducted the enquiry committed the appellant to the Court of Session to stand her trial there.
3. The appellant was charged with the murder of Sabitri Devi under section 302 of the Indian Penal Code. In the Sessions Court the prosecution examined nine witnesses. The learned Sessions Judge relying on the statement made by Sabitri Devi to the Assistant Inspector of Police which has been recorded and which was treated as the dying declaration of Sabitri Devi and the testimony of the five witness, namely, PWs 1, 4, 5, 7, and 8 who had seen Sabitri Devi found that the prosecution case had been proved beyond doubt and held the appellant guilty and convicted her under section 302 of the Indian Penal Code.
4. On appeal the High Court agreed with the findings of the learned Sessions Judge and held that the

appellant had been rightly convicted and dismissed the appeal.

5. Before the learned Session Judge, the main contention of the appellant appears to have been that the case of the prosecution had been properly established. It appears that the very same arguments were advanced before the High Court. The main argument before the High Court was that the Session Judge went clearly wrong in placing any reliance on the statement alleged to have been made by Sabitri Devi to the Police Officer and record by the Police Officer. It was argued before the High Court that no reliance could be placed on the said statement which was considered to be the dying declaration of the deceased as the statement had not been made to a Magistrate but to a Police Officer and the facts and circumstances of the case would indicate that Sabitri Devi was not in a fit condition to make any statement at all. It had been further argued that there was no corroborative evidence of the said statement and in the absence of any corroboration of the dying declaration conviction of the appellant only on the basis of the dying declaration could not be justified the High Court is judgment that carefully considered the arguments at length and had considered of the facts and circumstances of the case and the materials on record. For reasons recorded in a carefully considered judgment, the High Court negated the contentions, and held the appellant guilty and dismissed the appeal.

6. The main argument advanced before us in this appeal on behalf of the appellant is that the statement made by the deceased to the police Officer which has been record by the Police Officer and which has been relied on as the dying declaration of the deceased is not admissible and, in any event, no reliance should be placed on the same. It has been argued that a dying declaration which can be relied on as evidence must be made to a Magistrate and it has been further argued that in view of the physical state of the deceased at the time when she is supposed to have made this statement to the Police Officer, the said dying declaration is of no evidentiary value. It has been submitted that no explanation was offered on behalf of the prosecution why the declaration could not be made in the presence of a Magistrate. It is also the submission of the learned counsel for the appellant that in view of the severe burn injuries on the person of Sabitri Devi who had lost her consciousness and had died shortly thereafter, it could not have been possible for Sabitri Devi to make any such statement. Reference in this connection was made any such statement. Reference in this connection was made to the decision of this Court in the case of the Keshav Ganga Ram Nave v. State of Maharashtra and also to the decision of this Court in the case of K. Ramachandra Reddy v. Public Prosecutor.

7. In our opinion neither of these two decisions relied on the by the appellant is of any assistance is the facts and circumstances of this case. These decisions do not lay down as they cannot possibly lay down that the a dying declaration which is not made before the a Magistrate, cannot be used in evidence. A statement written or oral made by a person who is dead as to the cause of his death or as to any of the circumstances of the transaction which resulted in this death. In case in which the cause of that person's death comes into question, becomes admissible under section 32 of the Evidence Act, such statement made by the deceased is commonly termed as dying declaration. There is no requirement of law that such a statement must necessarily be made to a Magistrate. What evidentiary value or weight has to be attached to such statement must necessarily depend on the fact and the circumstances of each particular case. In a proper case, it may be permissible to convict a person only on the basis of a dying declaration in the light of the facts and circumstances of the case. In the instant case, the dying declaration has been properly proved. It is significant to note that the in the course of cross-examination of the witness proving the dying declaration. No questions were put as to the state of health of the deceased and no suggestion was made that the deceased was not in a fit state of health to me any such statement. The Doctor's evidence also

clearly indicates that it was possible for the deceased to make the statement attributed to her in the dying declaration in which her thumb impression had also been affixed. In the instant case, it cannot also be said that there is no corroborative evidence of the statement contained in the dying declaration. The evidence of PWs. 1, 4, 5 and 8 clearly corroborates the statement recorded in the dying declaration. We do not find any material on record on the basis of which the testimony of these witnesses can be disbelieved. It may also be noticed that none of these witnesses including the Police Officer who recorded the statement could be attributed with any kind of ill-feeling against the accused. The High Court has elaborately dwelt on this aspect and has carefully considered all the materials on records and also the arguments advanced on behalf of the appellant. We are in agreement with the view expressed by the High Court and in our opinion the High Court was right in upholding the conviction of the appellant.

8. We, accordingly, dismiss the appeal. The conviction of the appellant under section 302 of the Indian Penal Code and the sentence imposed on her are upheld. The appellant is now on bail. The bail-bond of the appellant is hereby cancelled and the appellant is directed to be taken into custody for serving out the sentence.

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