

Meesala Ramakrishan

Vs

State of A. P.

Criminal Appeal No. 171 of 1987

(R.M. Sahai, B. L. Hansaria JJ)

13.04.1994

JUDGMENT

B. L. HANSARIA, J. –

1. This appeal on certificate would require our decision, inter alia, on the question of evidentiary value of dying declaration made by gestures. This question arises, because from what is being stated later, it would be clear that the conviction of the appellant under Section 302 IPC is principally based on dying declaration of deceased, Meesala Ramanamma alias M. Venkata Ramanamma, who was none else than the wife of the appellant. As the deceased was not in position to speak at the relevant time her dying declaration came to be recorded by a Magistrate on the basis of some nods and gestures made by her. It is this dying declaration which has led in the main to find the appellant guilty of murder of his wife which has resulted in his being sentenced to RI for life - the minimum punishment provided by law.

2. The appellant alone had faced the trial relating to murder of his wife. The Sessions Judge, Visakhapatnam, found the appellant guilty under Section 302 and sentenced him as aforesaid. On appeal being preferred before the high Court of Andhra Pradesh, the same came to be heard by a Division Bench consisting of Justice Jayachandra Reddy (as he then was) and Justice Sardar Ali Khan. The learned Judges differed in their ultimate conclusions. Justice Reddy gave the benefit of doubt and ordered to acquit the appellant. Justice Khan on the other hand was of the view that the charge of murder has been brought home and so he dismissed the appeal. On the papers being placed before the Chief Justice of the High Court, it was ordered to place the appeal for hearing before Justice Rama Rao who agreed with the view expressed by Justice Khan, because of which the appeal ultimately came to be dismissed by the High Court. However, being of the view that the case is fit for appeal to this court on the question mentioned above, a certificate was granted under Article 134(1) (c) of the Constitution.

3. Before addressing ourselves on the question on which certificate has been granted, we have to see whether the conviction as ultimately upheld by the High Court is sustained on the basis of materials on record. As already indicated, the principal evidence is the dying declaration to which we shall advert a little later to decide whether on the basis of the declaration as made the conviction was warranted.

4. Though the law is well settled that conviction can be founded solely on the basis of dying declaration if the same were to inspire full confidence, which has been the view of his Court ever since the decision in Khushal Rao case (Khushal Rao v. State of Bombay, AIR 1958 SC 22 : 1958 Cri LJ 106), Which view was reiterated in Kusa v. State of Orissa ((1980) 2 SCC 207 : 1980 SCC

(Cri) 389 : AIR 1980 SC 559), which legal position has been questioned by the learned counsel for the appellant, we may nonetheless state that apart from the dying declaration there are materials on record to lend credence to the prosecution case that it is the appellant who had murdered his wife. This material has been provided by PWs 1, 2 and 3 who are immediate neighbours of the appellant. According to PW 1 he heard some shouts coming from the house of the deceased on the day occurrence (17-6-84) at about 12.30 p.m. when he was taking lunch. This brought him to the house of the appellant and entering inside the house he found the appellant standing by the side of his wife who was in flames. On being questioned, the appellant stated that he could not put down flames as he was afraid. It is this witness who covered the deceased thereafter with a bedsheet and put down the flames and then took her inside the main room in which action he was assisted by the appellant. On advice being given to the appellant to take his wife to the hospital it was so done. According to PW 2 she heard shouts and saw the deceased in flames and the appellant standing near the door. Of course, she admitted in cross-examination that she did not enter the house and that she had peeped through the window. To the similar effect is the evidence of PW 3.

5. The aforesaid shows that though what was stated by PWs 2 and 3 is not material, the statement of PW 1 that the appellant had done nothing to put down the flames does show his guilty mind, as otherwise, if a husband would have seen his wife in flames he would have made all efforts to put down the flames. It may, however, be stated that PW 1 when examined during the course of investigation had stated that the accused on being asked why he had not put down the flames had replied that he had covered the deceased with a 'Bontha' (blanket). This statement is however not admissible. Even if some benefit is given to the appellant about his probable act of having covered his wife with blanket at some point of time, that is not very material inasmuch as on the face of the burnt injuries sustained by the deceased which ultimately proved fatal, he must taken steps to remove the deceased to the hospital which was only done when asked by PW 1 and not voluntarily. We do, therefore, think that the appellant had stood almost as a silent spectator when his wife was in flames.

6. Another supporting material is the motive of the crime which, in the present case, according to the prosecution, was the strained relationship between the couple about which evidence has been given by PW 5, the mother of the deceased. As per her evidence the appellant was addicted to drinking and used to squander his earnings in drinks and the in-laws' family would therefore be asked to provide fund for maintenance which used to be done to the extent possible. The ill-treatment even led the deceased to live with her parents. A fortnight prior to the occurrence, the appellant is said to have come in drunken state and abused PW 5 apart from beating the deceased. This shows that the appellant was left with no love and affection for his wife and would not have at all been unhappy if she were to leave the world.

7. We now come to the main material which according to the prosecution fastens the guilt of murder on the appellant. The same is, as already indicated the dying declaration of the deceased which consisted of nods and gestures made when the deceased was questioned by the Magistrate who recorded the declaration. The Magistrate start recording the same from about 4.45 p.m. on 17-6-1984 and finished the same at about 5.25 p.m. It would be necessary to note the entire recording as put on record by the Magistrate, who was examined as PW 11. The same reads as below :

"Q What is your name ?

A She nods as if to say she cannot speak.

Q I am IInd Additional Munsif Magistrate, Visakhapatnam, understand ?

A She nods her head as if she understood.

Q How is your body burnt ?

A She nods as if she cannot speak.

Q Did your burnt due to accident ?

A She nods in the negative (nods head sideways).

Q Did anyone burn you ?

A She nods in assent (from above downwards).

Q Can you say who he was ?

A she makes signs showing her neck and gesturing as if tying around her neck and placing her hands on her chest.

Q You showed as tying around your neck. Did you opine it as 'Thali' ?

A She nods her head in assent.

Q Can you write ?

A She nods as if in assent.

Q Write about the particulars of that person ?

A She made some squibbles on the paper, vide paper enclosed herewith. (Her) eyes remain closed.

Q When I asked you whether anyone burnt you, you answered yes in gestures, when I asked you who he is, you showed your neck tying, and placed your hands on the chest, when I asked you did it mean 'Thali' you said 'yes' by gesture. Did you mean that he is your husband ? A She nods assent (from above downwards).

Q Can you sign now ? A She nods in the negative (sideways).

LTI of M. Venkata Ramanamma.

The questions put to the patient and the gestures made by the patient are recorded and read out to the deponent and admitted by her to be correct."

8. Prior to the recording of the aforesaid statement the Magistrate had really been requisitioned once earlier. That was around 3.30 p.m., Whereupon the Magistrate had come but finding that the deceased was not able to speak and was able to indicate the answers by nodding head, no statement was recorded. A second requisition was sent at about 4.35 p.m. and on being certified by the doctor that the injured was conscious, the aforesaid statement was recorded.

9. This being the position, the first submission to be advanced by the learned counsel for the appellant is that the recording of dying declaration at the second attempt is suspicious. We do not find anything to suspect the recording inasmuch as on the second occasion also recording was on the basis of nods and gestures and on the strength of any oral statement made. If may be that on the first occasion the Magistrate thought it was not advisable to record any statement on the basis of nods but on request being made again he made an effort and recorded the aforesaid statement.

10. A perusal of the statement as recorded does not leave anything to doubt that deceased meant the appellant as the person who set her on fire. This is absolutely clear from the answer to the question as to who had burnt her to which the answer recorded was : "She makes sign showing her neck and gesturing around her neck and placing her hand on chest." On being further asked as to whether by showing sign around her neck, did she mean 'Thali' (also known as Mangalsutra) a nod in assent was given. We have been informed from the Bar that the custom among the class of people from which the couple came was, and still is, that the husband at the time of marriage ties a Thali (Mangalsutra) around the neck of his would-be wife and the wife places the same on her chest. It is after these signs and nods were given that the Magistrate finally asked as to whether she meant the person who set fire to her was her husband and a nod from above to downward was given, which has to be taken to be a sign affirmation.

11. It is because of the above that the majority of the Judges in the High Court took the view that the deceased did want to say that it was the appellant, her husband, who had set her on fire. In this connection learned counsel for the appellant, however reads out to us that part of judgment of Jayachandra Reddy, J. in which he had dealt with the dying declaration and the reasons given by the learned Judge in not satisfied fully about the same meaning that it was the appellant who had set fire on her. We are not satisfied if the reasons assigned by the learned Judge are adequate and cogent to reject the dying declaration as having clearly indicated that it was the appellant who had murdered. This would be apparent from two observations made by the learned Judges in this connection. The first is related to first question and answer which is as below :

"Q What is your name ?

A She nods as if she cannot speak."

12. The learned Judge has observed that though it has been recorded that the deceased "nods" it has not been mentioned whether it is sideways, upward or downward. But then, there is further observation in the first answer that the deceased nodded as if to say she cannot speak. This clearly brings home what the nodding was meant convey. We may then refer to the observation made by the learned Judge regarding the answer given to the last but one question which was whether the deceased meant her husband to which the Magistrate recorded : "She nods assent (from above downwards)". As to this the learned Judge observed that from this "can we say definitely that from this nodding that she meant that the accused killed her or that the accused did not kill her". We do not think if this question really arises as the nod being from above to downward has to be an answer in affirmative to the question.

13. We have, therefore, no hesitation in endorsing the view taken by Justices Ali Khan and Rama Rao that the deceased meant her husband as the person who had burnt her. We do not find suspicious circumstance also to disbelieve the dying declaration. This apart, there are corroborating materials to implicate the appellant to which we have already referred.

14. We now advert to the question to the evidentiary value of a dying declaration based on gestures. The Judges of the High Court themselves have noted some decisions in this regard. These are : (1) Alexander Perera Chandarasekera v. King (AIR 1937 PC 24 : 38 Cri LJ 281 : (1937) 1 MLJ 600); (2) Darpan Potdarin v. Emperor (AIR 1938 Pat 153 : 39 Cri LJ 384 : 1938 PWN 266); and (3) Gajendra Kar v. State of Orissa (1973 Cri LJ 1058 : 39 Cut LT 186 : 1973 Cut LR (Cri) 109).

15. The Privy Council Decision is however the main judgment on which the learned Judges of the High Court have relied inasmuch as the two other decisions have relied on what was held by the Privy Council. In that case as well (which came from Ceylon) the appellant had been convicted of murder. The victim's throat had been cut she was not in a position to speak but on being questioned regarding the person who committed it, she answered by signs and nods. The question which was examined by the Privy Council was whether the statement was relevant and admissible. It was held that the statement constituted a verbal statement resembling the case of a dumb person and was relevant and admissible. It was pointed out at p. 26 that Section 32 of the Ceylon Evidence Ordinance (which is in pari materia with Section 32 of our Evidence Act) has used the word "verbal" and not "oral" Reference was made to Sections 3 and 119 of the Ordinance in this connection. (Parallel sections in our Evidence Act being also Section 3 and 119). In section 3, which is the interpretation clause, while defining "Evidence" it has been stated that it means and includes, inter alia, "oral evidence". Section 119 deals with dumb witnesses and states that he may give his evidence in any manner in which he can make it intelligible, as by writing or by signs. As to this evidence it has been stated the same shall be deemed to be oral evidence. These show that evidence given by signs as well is admissible and is taken to be oral evidence.

16. In the Patna case (AIR 1938 Pat 13 : 39 Cri LJ 384 : 1938 PWN 266) the victim was in a serious condition and had made dying declaration by signs of hand and head the same was held to be admissible by relying on the above Privy Council case (AIR 1937 PC 24 : 38 Cri LJ 281 : (1937) 1 MLJ 600). The court, however stated that the recording must be of the precise nature of the signs and not interpretation of the same. Here, we have recording of the nature of nods and gestures. In the Orissa case (1973 Cri LJ 1058 : 39 Cut LT 186 : 1973 Cut LR (Cri) 109) some signs and gestures were made, which were taken to be verbal statement encompassed by section 32.

17. We are, however, not much at the admissibility of the statement but its evidentiary value. As to this, we would state that the "sign language" has developed so much by now that it speaks quite well. We may refer in this connection to what has been mentioned about this language at pp. 120 to 123 of Encyclopaedia Britannica, Vol. 7, 1968 Edn., wherein the history of the education of the deaf has been dealt with. A perusal of the same shows that the educators of the deaf are divided into those who favour the manual (sic language) system supplemented by articulation and those who favour the speech and lip reading, vetoing the manual language. At p. 796 of Vol. 10 of the aforesaid Encyclopaedia, something more has been said about "sign language", Reference has been made to what a certain Meher Baba, an Indian religious figure, had done in this regard. As to this Baba it has been noted that he abstained from speech in the last decades of his life, but "dictated" voluminous to his disciples, at first pointing to letters on an English language alphabet board; but, after evolving a suitable sign language of gestures, he relied on that alone. If volumes can be dictated by this method, a short message of the type at hand can definitely be conveyed by gestures.

18. We may also refer to what has been stated at pp. 558 to 560 of Encyclopaedia Americana, Vol. 8 (1983). These pages contain a discussion on "Education and Training of the deaf". It traces the history of modern education of deaf and speaks about sign language. It states that even today there are educators of deaf who favour the manual system which includes use of finger or sign language.

At p. 800 of Vol. 24 of this Encyclopaedia there is a detailed discussion of "Sign Language" and it has been stated that this language can "convey information, issue commands or tell stories". The reader is further informed about the use of this language for utilitarian, ritual, theatrical and comparative purpose. It has also been stated that complete sign languages are still in use in parts of Asia and the Americas.

19. It may not be out of place to mention that the viewers of television would find that even news are telecast for the deaf through sign language and lip movements.

20. On the basis of what has been noted above, we hold that dying declaration recorded on the basis of nods and gestures is not only admissible but possesses evidentiary value, the extent of which shall depend upon who recorded the statement, what is his educational attainment, what gestures and nods were made, what were the questions asked - whether they were simple or complicated - and how effective or understandable the nods and gestures were.

21. In the present case, the questions being simple and short, the recorder being a Magistrate, the certifier of mental conscious state of the deceased being a doctor, nods being effective and meaningful, we are satisfied that full reliance could have been placed on the statement of the deceased as recorded by PW 11 to find the appellant guilty under Section 302.

22. In view of the aforesaid, we confirm the majority judgment of the High Court and dismiss the appeal.

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