State of Rajasthan

Vs

Bhup Sing

Criminal Appeal No. 377 of 1996

(K. Ramaswamy, K. T. Thomas, Dr. A. S. Anand G. T. Nanavati JJ)

13.01.1997

JUDGMENT

THOMAS, J. -

1. The respondent's wife (Mst. Chawli) was shot dead on 20-7-1985 while she was sleeping in her house. Respondent Bhup Singh was alleged to be the killer. The police, after investigation, upheld the allegation and challaned him. Though the Sessions Court convicted him of murder, the High Court of Rajasthan acquitted him. This appeal has been filed by special leave by the State of Rajasthan in challenge of the aforesaid acquittal.

2. The prosecution case is a very short story : Chawli was first married to the respondent's brother who died after a brief marital life. Thereafter, Chawli was given in marriage to the respondent, but the new alliance was marred by frequent skirmishes and bickerings between the spouses. Chawli was residing in the house of her parents. The estrangement between the couple reached a point of no return and the respondent wished to get rid of her. So he went to her house on the night of the occurrence and shot her with a pistol. When he tried to use the firearm again, Chawli's father who had heard the sound of the first shot rushed towards him and caught him but the killer escaped with the pistol.

3. Chawli told everybody present in the house that she was shot at by her husband Bhup Singh. She was taken to the hospital and the doctor who attended on her thought it necessary to inform a Judicial Magistrate that her dying declaration should be recorded. Pursuant to it PW 5, Bhagwan Singh, who was a Judicial Magistrate of first class, Alwar, went to the hospital and recorded her dying declaration. At 2.30 p.m. she breathed her last. The police registered the case on the basis of a statement recorded from Bhajan Lal, a neighbour. On 22-7-1985, the respondent was arrested in connection with another criminal case and on the strength of the information elicited from him the police recovered Article 4 the pistol.

4. The bullet recovered from the body of Chawli as well as Article 4 the pistol were sent to the ballistic expert. In his report, the said expert affirmed the possibility of the bullet having been fired from the said pistol.

5. During the trial Chawli's father (Ram Ratan PW 1), her sister (Rameshwari PW 2) and Bhajan Lal PW 3 who gave the first information statement had been declared hostile as they all supported the respondent. Their version was that somebody else had shot her dead and the respondent was falsely implicated. Chawli's mother Smt. Mangli was examined by the respondent as Defence Witness 2 to support his plea. However, the trial a court, after rejecting the evidence of PW 1, PW 2

and PW 3 and also DW 2, placed full reliance on the dying declaration proved by PW 5, Judicial Magistrate and also on the evidence pertaining to the recovery of Article 4 the pistol and convicted the respondent and sentenced him to imprisonment for life.

6. The Division Bench of the High Court of Rajasthan, which heard the appeal filed by the respondent, declined to act on the dying declaration. The High Court held that the evidence relating to recovery of the pistol was outside the scope of Section 27 of the Evidence Act inasmuch as the recovery was effected during investigation of another case. As nothing else remained for the prosecution to embark upon, the Division Bench acquitted the respondent.

7. If the dying declaration recorded by PW 5, the Judicial Magistrate is reliable, there is no legal hurdle in basing a conviction on it even without any supporting material.

8. The statement in Ex. P-8 dying declaration is unmistakably clear that her husband Bhup Singh shot her with a pistol. But the learned Judges of the High Court highlighted two features in Ex. P-8 dying declaration as infirmities, vitiating its evidentiary value. First is, the deceased answered the questions put to her by the Magistrate in Bagri language whereas PW 5 recorded it in Hindi in a narrative form. According to the Division Bench the Magistrate should have recorded the dying declaration in the form of questions and answers. Second is, PW 5, the Magistrate had not ascertained from the doctor whether the deceased was in a position to give a conscious dying declaration.

9. Dr. Naresh Kumar (PW 7) who attended the deceased first when she was brought to the hospital with a bullet injury has given evidence that he sent a requisition to the magistrate as he felt that a dying declaration from Chawli should be recorded. PW 5, Judicial Magistrate has deposed hat he recorded in Hindi what the deceased told him. The doctor and the Judicial Magistrate have said in one accord that the deceased was conscious when the statement was made. In the above situation there was no justification for the High Court to assume that the deceased would not have been conscious when she gave the statement to the Judicial Magistrate. Similarly, it was a wrong assumption that the deceased would not have spoken in Hindi because PW 5 has stated in his evidence positively that the deceased gave her answers in Hindi. Even otherwise, it is too much to think that the Judicial Magistrate would have recorded differently from what the deceased had said to him.

10. Assuming that the deceased gave her statement in her own language, the dying declaration would not vitiate merely because it was recorded in a different language. We bear in mind that it is not unusual that courts record evidence in the language of the court even when witnesses depose in their own language. Judicial officers are used to the practice of translating the statements from the language of the parties to the language of the court. Such translation process would not upset either the admissibility of the statement or its reliability, unless there are other reasons to doubt the truth of it.

11. Nor would a dying declaration go bad merely because the magistrate did not record it in the form of questions and answers. It is axiomatic that what matters is the substance and not the form. Questions put to the dying man would have been formal and hence the answers given are material. Criminal courts may evince interest in knowing the contents of what the dying person said and the questions put to him are not very important normally. That part of the statement which relates to the circumstances of the transaction which resulted in his death gets the sanction of admissibility. Here it is improper to throw such statement overboard on a pedantic premise that it was not recorded in

the form of questions and answers. (Vide Ganpat Mahadeo Mane v. State of Maharashtra (1993 Supp (2) SCC 242 : 1993 SCC (Cri) 491).

12. We find Ext. P-8 the dying declaration as a clear and unambiguous statement. The infirmities pointed out by the High Court are too tenuous to knock off such a valuable and sturdy item of substantive evidence.

13. The High Court side-stepped the evidence regarding recovery of the pistol and the statement of the accused which led to it on the mere ground that the pistol was recovered in connection with another case. That other case was registered on 9-7-1985 as Crime No. 116 of 1985 against the respondent and he was arrested on 22-7-1985 in connection therewith. PW 12, SHO of Raising Nagar Police Station, has deposed in this case that when the respondent was questioned he told him that the pistol was wrapped in a bag and was buried near his house. When the respondent was taken to that place he disinterred Article 4 the pistol and handed it over to the police.

14. It is clear from the above evidence that PW 12 discovered the fact that the respondent had buried Article 4 the pistol. His statement to the police that he had buried the pistol in the ground near his house, therefore, gets extricated from the ban contained in Sections 25 and 26 of the Evidence Act as it became admissible under Section 27. The conditions prescribed in Section 27 for unwrapping the cover of ban against admissibility of statement of the accused to the police have been satisfied. They are : (1) A fact should have been discovered in consequence of information received from the accused; (2) he should have been accused of an offence; (3) he should have been in the custody of a police officer when he supplied the information; (4) the fact so discovered should have been deposed to by the witness. If these conditions are satisfied, that part of the information given by the accused which led to such discovery gets denuded of the wrapper of prohibition and it becomes admissible in evidence. It is immaterial whether the information was supplied in connection with the same crime or a different crime. Here the fact discovered by the police is not Article 4 the pistol, but that the accused had buried the said pistol and he knew where it was buried. Of course, discovery of the said fact became complete only a when the pistol was recovered by the police.

15. In this context, we think it appropriate to quote the celebrated words of Sir John Beaumont in Pulukuri Kottaya v. Emperor (AIR 1947 PC 67 : 51 CWN 474 : 49 Born LR 508 : 74 IA 65) :

> "In their Lordships' view it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact... Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant."

The ratio therein has become locus classicus and even the lapse of half a century after its pronouncement has not eroded its forensic worth. We may point out that this Court has approvingly referred to the said ratio in a number of decisions e.g. Jaffar Hussain Dastagir v. State of Maharashtra ((1969) 2 SCC 872 : AIR 1970 SC 1934); K. Chinnaswamy Reddy v. State of A. P. ((AIR 1962 SC 1788 : (963) 1 An LT 111); Earabhadrappa v. State of Karnataka ((1983) 2 SCC 330

: 1983 SCC (Crl) 447); Ranbir Yadav v. State of Bihar ((1995) 4 SCC 392 : 1995 SCC (Cri) 728) and Shamshul Kanwar v. State of UP ((1995) 4 SCC 430 : 1995 SCC (Cri) 753).

16. Ex. P-14 is the report dated 8-4-1986, submitted by Dr. P. S. Manocha (Assistant Director of State Forensic Science Laboratory, Rajasthan). The said report which is evidence under Section 293 of the Code of Criminal Procedure proves that the bullet and pistol (involved in this case) were microscopically examined and the expert expressed the opinion that the bullet could have been fired from the said pistol. This is yet another circumstance which though overlooked by the High Court, we bear in mind while considering the legal implication of the evidence relating to the recovery of Article 4 the pistol.

17. For the aforesaid reasons we are of the firm view that the High Court was clearly wrong in marginalising the evidence of PW 12 that the respondent told him about concealment of Article 4 the pistol which is clearly admissible under Section 27 of the Evidence Act.

18. As the High Court committed serious error in discarding the aforesaid two very valuable items of evidence, we are constrained to interfere with the order of acquittal. We, therefore, upset the impugned judgment and restore the conviction and sentence passed on the respondent by the trial court. We direct the Sessions Judge, Sri Ganganagar, to take immediate steps to put the respondent in jail for undergoing the sentence.