

Jai Karan

Vs

State of Delhi (NCT)

Criminal Appeal No. 930 of 1998

(K.T. Thomas, D. P. Mohapatra JJ)

27.09.1999

JUDGMENT

D.P. MOHAPATRA, J.:-

1. In this appeal filed by the accused Jai Karan the judgment of the learned Additional Sessions Judge, Delhi in Sessions Case No. 16 of 1991 holding his guilty of the charge under section 302 IPC for the murder of his wife Wanti Devi (hereinafter referred to as the Deceased) and the order sentencing his to RI for life which was confirmed by the High Court of Delhi in Criminal Appeal No. 91 of 1994, is under challenge.
2. The genesis of the case is that the relationship between the appellant and the deceased was not cordial. The deceased has gone to the Court with a claim for maintenance against the appellant. On the interventions of their relations and well wishers the differences were patched up and she withdrew the case. Thereafter the deceased returned to her marital home and started living with the appellant. This happened about 7-8 months before the fateful incident.
3. On the intervening night of 25-9-1990/26-9-1990 the deceased was admitted to Jai Prakash Narain Hospital, Delhi (LNJPN) with extensive burn injuries on her body. On being informed about it by the duty constable, SI Baltej Singh (PW-19) arrived at the hospital and obtained the medico-legal certificate of the deceased in which it was stated, inter alia, that the story given by the patients was to the effect that she was burnt by her husband by kerosene being poured on her after a fight between the two. On such information a formal FIR under Section 307 IPC was registered. Later in the day at 9.45 a.m. on receiving the information that Wanti Devi expired at 8.35 a.m. the case was converted into one under section 302 IPC. After investigation charge sheet under Section 302 IPC was filed against the appellant.
4. Having denied the charge the appellant faced trial. It was his case that the injuries sustained by the deceased were accidental and the incident occurred when she was trying to light the kerosene stove.
5. The prosecution examined in all 19 witnesses including three doctors, Dr. Anil Kumar Aggarwal (PW 2), who conducted the post-mortem examination of the deceased; Dr. P.S. Bandari (Pw-3), who was the Head of LNJP hospital, Delhi in which injured Wanti Devi was admitted; Dr. Gaurav Nihara (PW-11), who is said to have recorded the dying declaration of the deceased (Ex. PW 11/A); Munshi Ram (PW \$) and Joginder Singh (PW 5), neighbours of the parties; Hari Singh (PW 10), father of the deceased; Chhano Devi (PW 17), mother of the deceased; Prem Singh (PW 16), a nephew of the deceased and Baltej Singh (PW 19), Sub Inspector of Police, the Investigating Officer. Neither the neighbours nor the relations of the deceased supported the prosecution case and they were cross-

examined by the Public Prosecutor with the permission of the Court.

6. Beena (DW 1) daughter of the deceased was the sole witness for the defence.
7. The learned trial judge, as appears from the discussion in the judgment believed the prosecution case that it was the accused who poured kerosene on his wife and lit the matchstick on account of which she suffered the fatal injuries, relying mainly on the dying declaration (Exh. 11/A) and accordingly passed the order of conviction and sentence.
8. The High Court on perusal of the oral and documentary evidence came to the conclusion that the dying declaration was a reliable piece of evidence on which the order of conviction could be based and accordingly confirmed the judgment and order of the trial court.
9. The short question that arises is whether the dying declaration said to have been made by the deceased (Exh. 11/A) is believable and acceptable and conviction can be based on the same.
10. A dying declaration is admissible in evidence on the principle of necessity and can form the basis for conviction if it is found to be reliable. While it is in the nature of an exemption to the general rule forbidding hearsay evidence, it is admitted on the premises that ordinarily a dying person will not falsely implicate an incorrect person in the commission of a serious crime. It is this premises which is considered strong enough to set off the need that the maker of the statement should state so on oath and be cross-examined by the person who is sought to be implicated. In order that a dying declaration may form the sole basis for conviction without the need for independent corroboration it must be shown that the person making it has the opportunity of identifying the person implicated and is thoroughly reliable and free from blemish. If, in the facts and circumstances of the case, it is found that the maker of the statement was in a first state of mind had voluntarily made the statement on the basis of personal knowledge without being influenced by others and the court on a strict scrutiny finds it to be reliable, there is no rule of law or even of prudence that such a reliable piece of evidence cannot be acted upon unless it is corroborated. A dying declaration is an independent piece of evidence like any other piece of evidence – neither extra strong nor weak – and can be acted upon without corroboration if it is found to be otherwise true and reliable [Padmaben Shamabhauj Patel Vs State of Gujrat (para 8)].

11. In *Jayaraj vs. state of T.N* this court made the following observations: (AIR Headnote)

"When the deponent (while making his dying declaration) is in severe bodily pain (because of stabbing injuries in abdomen), and words were scarce, his natural impulse would be to tell the Magistrate, without wasting his breath of details, as to who has stabbed him. The very brevity of dying declaration, in the circumstances of the case, far from being of dying declaration in the circumstance, was an index of its being true and free from the taint of tutoring, more so when the substratum of the dying declaration was fully consistent with the ocular account given by the eyewitnesses."

12. In case of *Khushall Rao V. State of Bombay* this Court laid down the following propositions of law relating to the test of reliability of dying declaration:

- (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 circumstances and with reference to the principles governing the weighing evidence.

(5) That a dying declaration which has been recorded by competent Magistrate in the proper manner, that is to say in the form of questions and answers, 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, has 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 has several opportunities of making a dying declaration apart from the official record of it; and that the statement has been made at the earliest opportunity and was not the result of tutoring by interested parties.

13. In the case of Paniben V. State of Gujrat this Court summed up the principles of dying declaration with the following observation: (SCC pp. 480 – 81, para 18)

"18. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, prompting or a product of imagination, the Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailants. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration, it cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under:

‘(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration, (Munnu Raja Vs. State of M.P.)

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration (State of U.P. Vs. Ram Sagare Yadav; Ramawati Devi Vs. State of Bihar.)

(iii) This Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination, the deceased has opportunity to observe and identify the assailants and was in a fit state to make the declaration (k. Ramachandra Reddy Vs. Public Prosecutor.)

(iv) Where dying declaration is suspicious it should be acted upon without corroborate

evidence. (Rusheed Beg Vs. State of M.P.)

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh Vs. State of M.P.)

(vi) A dying declaration which suffers from uniformity cannot from the basis of conviction (Ram Manorath Vs. State of U.P.)

(vii) Merely because a dying declaration does not contain the details as the occurrence, it is not to be rejected (State of Maharashtra Vs. Krishnamrthi Laxmipati Naidu.)

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth (Surajdeo Ojha vs. State of Bihar)

(ix) Normally the courts in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail (Nanahasu Ram Vs. State of M.P.)

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon (State of U.P. Vs. Madan Mohan.)

14. Testing the case in hand on the touchstone of the principles laid down in the decisions noted above the position that emerges is that the prosecution evidence rests solely on the dying declaration said to have been made by the deceased since the parents, other relations and neighbours did not support its case. From the evidence of Dr. Bhyandari (PW 3), it appears that he had produced the case sheets pertaining to the injured Wanti Devi in the Court and with reference to those papers he stated that the injured was admitted in the Burns Ward of the Hospital on 26-9-1990 at 1.00 a.m. with 95% burns; that she was seen by Dr. Rajender Prasad Singh, the then Medical Officer on duty in the ward and that the case-sheets were written by Dr. Rajender Prasad Singh. From the evidence of this witness it is clear that though he was the Head of the unit in which the patient was admitted he has not personally attended the patient nor had any knowledge about the statement made by her. The witness could not say where Dr. Gaurav Nijhara was on duty on that day, even after seeing records.
15. Dr. Gaurav Nijhara (PW 11) in this testimony has stated that he was posted as medical officer in LNJP Hospital on 26-9-1990 and on that day the injured Wanti Devi, wife of Jai Karan was brought to the hospital by her husband. It is also in his evidence that the injured told the witness that after a fight with her husband, he (husband) poured kerosene on her and lit fire; that on examining the injured he found her in the Burns Ward, prepared her MLC No. 89766 and signed the document Ex. PW 11/A. The witness also examined the accused when he brought his wife and gave the history of burning both his hands while "burning his wife with kerosene". This history was also written by the witness (Ex. PW 11/B). The witness had also stated that the injured persons (deceased and accused) made the statement in Hindi while he recorded it in English, that he has not read over and explained the contents of the document to the injured. He had also not taken her signature or thumb impression of the document. No other person has attested the statement alleged to have been made by the injured Wanti Devi before the witness.
16. A look at the document Ex. Pw 11/A clearly brings out that an endorsement has been made

by Dr. Rajender Prasad Singh at 1.10 a.m. that the injured Want Devi was not in a fit condition for making a statement. This endorsement also gains support from the evidence of the police officer (PW 19) who stated that on getting the information about the incident when he reached the hospital he was told that the injured was not in a fit condition for making any statement and he returned without recording any statement.

17. A closer look at the document also shows that a portion of it stating "After fight between to" was written in a different manner (words written in smaller letters) giving an impression that it was not written at the time of making the rest of the endorsements.
18. From the statement of Dr. Bhandari it is clear that Dr. Gaurav Nijhara was not allotted duty in the unit in which the deceased Wanti Devi was admitted. It is categorical statement that he could not say where Dr. Nijhara was allotted duty in the hospital. This statement by the Head of the unit is very important. The statement raises a serious doubt whether Dr. Gaurav Nijhara was at all on duty in the Burns Ward at the time when the injured was admitted. Further, from the endorsement made by Dr. Rajender Prasad Singh who in a fit condition for making a statement. There is no statement made by Dr. Nijhara or any other witness when her condition improved and she became fit for making the statement. Unfortunately, Dr. Rajender Prasad Singh has not been examined by the prosecution.
19. In the facts and circumstances of the case emerging from the evidence on record as discussed in the foregoing paragraphs, we find it difficult to rely on the alleged dying declaration as the sole basis for conviction.
20. On a perusal of the records and on giving our anxious considerations to the entire matter we are of the view that it will not be safe to convict the appellant solely on the basis of the dying declaration made by the deceased. The learned courts below erred in passing the judgment and order of conviction against the appellant on that basis.
21. The appeal is allowed. The impugned judgment of the High Court of Delhi in Criminal Appeal No 91 of 1994 confirming the judgment of the Additional Sessions Judge, Delhi in sessions Case No. 16 of 1991 is set aside and the appellant is acquitted of the charges framed against him.