SUPREME COURT OF INDIA

State of Karnataka

Versus

Sharif

27.1.2003

(S. Rajendra Babu and G.P. Mathur, JJ.)

Criminal Appeal No. 662 of 1995.

JUDGMENT

G.P. Mathur, J. - This appeal by special leave has been preferred by State against the judgment and order dated March 28, 1989 of High Court of Karnataka by which the appeal preferred by the accused respondent Shariff was allowed and the judgment and order dated February 6, 1987 of Sessions Judge, Bangalore Rural District, Bangalore, by which he had been convicted under Section 302 Indian Penal Code and had been sentenced to imprisonment for life was set aside.

2. The accused-respondent was charged under Section 302 Indian Penal Code for having committed murder of his wife Muneera Begum by pouring kerosene on her body and setting her on fire in his house at about 4.00 a.m. on July 24, 1986.

3. The case of the prosecution in brief is that the marriage of the accused with Muneera Begum took place about 10 years back from the date of the incident and thereafter they lived in the house of Madar Shariff, the elder brother of the accused. Sometime thereafter the parents-in-law of the accused gave him a site in the same village where he built a house and started living there. The deceased Muneera Begum gave birth to three children and the elder one PW-3 Rasheed was aged 8 or 9 years. The accused started ill-treating his wife after the birth of the third child and a Panchayat was held wherein he was asked to behave properly and look-after his wife. The accused was working as a labourer and was earning his livelihood by breaking the stones. The deceased was making "agarbattis" in her house to make some extra money. At about 4.00 a.m. on July 24, 1986 the accused started quarrelling with his wife and demanded money which she had earned sometime back by selling agarbattis. Thereafter he poured kerosene on her and set her on fire by a matchstick. PW-3 Rasheed (son of the accused) saw the incident and ran to the house of his maternal grandmother PW-1 Jaina Bi, who lived at a short distance away. Jaina Bi and her son PW-2 Syed Akbar (deceased's elder brother) came rushing and saw that Muneera Begum had sustained burn injuries and the accused was also present there. Muneera Begum was then taken to the Mission hospital in Habbagodi but the doctors advised that she should be taken to Victoria Hospital in Bangalore. The police at Habbagodi helped them in arranging a jeep on which Muneera Begum was taken to Victoria hospital, Banglore where she was admitted at about 9.30 a.m. and was examined by PW-12 Dr. K.M. Nagabhushan. He examined the injuries of the deceased and admitted her for treatment and a memo was sent to Victoria Hospital Police Station. PW-11 B.K. Krishnappa, A.S.I. then came to the hospital and recorded the statement of the deceased on the same day. Another

statement of the deceased was recorded on 26th July, 1986. She however succumbed to her injuries on July 31, 1986. After completing the investigation the Police submitted charge-sheet against the accused-respondent and in due course the case was committed to the Court of Sessions. The prosecution examined in all 15 witnesses and filed some documents. The learned Sessions Judge believed the case of the prosecution and convicted the accused-respondent under Section 302 Indian Penal Code and sentenced him to imprisonment for life. The appeal preferred by the accused was allowed by the High Court and his conviction and sentence was set aside.

4. Shri M. Veerappa, learned counsel appearing for the State of Karnataka has assailed the judgment and order of the High Court and has submitted that the prosecution had adduced reliable evidence to establish its case and the High Court has erred in discarding the testimony of the witness and also several dying declarations of the deceased which were reliable and trustworthy and the reasons given for acquitting the accused are wholly perverse and contrary to settled principles of law.

Shri Ajay Kumar Jain, who appeared Amicus Curiae for the accused-respondent, has submitted that the evidence on record adduced by the prosecution was wholly untrustworthy and in the facts and circumstances of the case the dying declarations of the deceased could not be relied upon and, therefore, the High Court was perfectly justified in acquitting the accused-respondent. Shri Jain has further submitted that at any rate this was a case in which two views were possible and the High Court having taken a view in favour of the accused and having acquitted him, it will not be proper for this Court to interfere with the impugned judgment and order to convict the accused.

5. In order to consider the contentions raised by the learned counsel for the parties, we will briefly refer to the evidence on record. PW-1 Jaina Bi is the mother of the deceased, Muneera Begum. She has stated that she had given a small piece of land to the accused where he had constructed a house and was living with his family. This was about 1/4 furlong from her own house. After the birth the third child, the accused used to complain that the food items in the house were getting exhausted very quickly. He used to beat the deceased quite often. A Panchayat was held in the village wherein the accused was asked to treat his wife properly. About two months before the occurrence, the deceased went to her material uncle's house on account of ill-treatment of her husband. The accused then approached the members of the Panchayat for bringing her back. The deceased was thereafter virtually forced to come back and to start living with her husband. Similar statement has been given by PW-2 Syed Akbar and PW-7 Baknu who are the elder brothers of the deceased and PW-6 Abdul Razak, a resident of the same village. The testimony of these witnesses establishes the fact that the accused had no love or affection for his wife and had been ill-treating her for quite some time.

6. On the factum of incident the prosecution examined PW-3 Rasheed who is the son of the accused-respondent and was aged about 8-9 years at the time of the incident. He has stated that his father used to beat his mother almost everyday. In the night his brother, sister and parents slept in the house. He woke up in the early morning and saw that his mother was burning in fire and his father was standing there. He immediately ran to his maternal uncle's house to call him. Thereafter his grandmother PW-1 Jaina Bi and maternal uncle PW-2 Syed Akbar came to his house.

7. The most important evidence in this case is the series of statements given by deceased Muneera Begum to different persons on several occasions. PW-2 Syed Akbar has stated that his nephew PW-3 Rasheed came to his house at about 6.00 a.m. on July 24, 1986 and informed him that his father had burnt his mother. He then immediately rushed to the house of his sister and inquired what had happened and then she said that her husband had tied her hands and legs, covered her mouth and after pouring kerosene had set her on fire. PW-6 Abdul Razak resides in the premises of the mosque

in the same village. He has stated that when he was returning from the mosque at 6.00 a.m. after finishing the prayers, he saw a crowd near the house of the accused. He went there and found Muneera Begum in burnt condition and when the inquired as to how it had happened, she told that her husband had tied her hands and legs, poured kerosene and burnt her. She could not raise any alarm as the accused covered her mouth with a cloth. PW-7 Baknu is another brother of the deceased and was working in Hosur stone quarry. According to his statement he received information about the incident at about 8 O'clock and thereafter he reached Victoria Hospital the same night. The deceased informed him that her husband had tied her hands and legs, poured kerosene and had set on fire. No doubt PW-2 Syed Akbar and PW-7 Baknu are real brothers of the deceased, but PW-6 Abdul Razak is not related to her in any manner. He is the Imam in the mosque. There is no reason why he would give a false statement in order to implicate the accused Shariff as he was also related to them as their brother-in-law. In our opinion the testimony of these three witnesses is quite reliable and it shows that the deceased Muneera Begum made a statement that her husband had tied her hands and legs and after pouring kerosene had set her on fire in the morning of July 24, 1986.

8. As mentioned earlier the deceased Muneera Begum was taken to Victoria Hospital, Bangalore for treatment. PW-12 Dr. K.M. Nagabhushan was posted as Assistant Surgeon in the aforesaid hospital and was working as Casualty Medical Officer on July 24, 1986. He has stated that Muneera Begum was brought to the hospital at about 9.30 a.m. with burn injuries by her brother Syed Akbar. She gave her own statement with regard to the incident and stated that she sustained burn injuries when her husband poured kerosene on her body and set her on fire in his house at 4.00 a.m. He has further stated that on examination he found her to be conscious and was answering the questions properly and her orientation was good. After examining her he made the necessary entries in the Accident Register and the relevant extract of the same have been proved by the witness as Exh. P-12 and the same reads as under :-

"Patient says that she sustained burn injuries when her husband Shariff threw kerosene oil over her body in her house and put fire to it on 24.7.86 at 4.00 a.m.

There was a quarrel between her and her husband for the last two days.

On examination patient is conscious. Pulse 86/minute.

CVS/RS NAD

Answers well to the question and orientation was good.

Brought by Akbar (brother)

Kerosene smell over the body of the patient."

9. Besides above two other dying declarations were recorded by Sub-Inspectors of Police Station Victoria Hospital and Anekal Police Station on July 24, 1986 and July 26, 1986 respectively. PW-11 BK Krishnappa was ASI Victoria Hospital Police Station. His statement shows that after receiving a memo from PW-12 Dr. Nagabhushan that Muneera Begum was admitted in the hospital with burn injuries, he made the necessary entry in the general diary and went to the hospital. He sought permission from PW-5 Dr. Rangarajan, who was on duty, to record the statement of Muneera Begum. Thereafter in the presence of the Doctor he recorded her statement which is fairly a detailed one. In her statement she gave details about the past conduct and behaviour of her husband leading

to an earlier complaint at police station against him. She further stated that accused picked up a quarrel on July 24, 1986, tied her hands and legs and thereafter poured kerosene and set her on fire. She also stated that she tried to raise an alarm but the accused placed a cloth over her mouth. The dying declaration has been quoted in extenso in the judgment of the learned Sessions Judge and it is therefore not necessary to reproduce the same here.

10. PW-14 Kumar Swamy was posted as PSI at Anekal Police Station. He took over investigation of the case on July 29, 1986. He went to Victoria Hospital on the same day and after obtaining permission from PW-5 Dr. Rangarajan, recorded the statement of Muneera Begum which is Ex.P-4. In this statement also she stated that for the last two years the accused was abusing and beating her. She had made a complaint at police station and the police warned him to behave properly. Her husband was working as a labourer and she was also making some money by making agarbattis. On July 21, 1986 she had given Rs. 100/- to him. She alongwith her husband and children slept in the house on July 24, 1986 and at about 4.00 a.m. in the morning her husband picked up a quarrel about some more money. Then he poured kerosene oil over her and set her on fire. She tried to scream but her husband gagged her mouth by a cloth. This statement Ex. P-4 has also been quoted in extenso in the judgment of the learned Sessions Judge and therefore we are not reproducing it here.

11. The accused in his statement under Section 313 Cr.P.C. simply denied the case of the prosecution and alleged to have been falsely implicated. He however did not lead any evidence in his defence.

12. The evidence on record, gist of which has been given above, shows that for the preceding two years the accused Shariff had been ill-treating and beating his wife Muneera Begum. In this regard complaints were made at the Police Station and also with the Panchayat of the village who called the accused and asked him to behave properly. The deceased was earning some money from making agarbattis but the accused forced her to part with the same. Thus, the evidence shows that the relations between the accused and his wife were far from cordial and he had hardly any love and affection for her.

13. The learned Sessions Judge has held that looking to the age of PW-3 Rasheed and some statements made by him in his cross-examination, it would be unsafe to conclusively rely on his testimony that he saw his father standing in the house when the body of his mother was burning. At the same time reliance upon the testimony of PW-1 Jaina Bi and PW-2 Syed Akbar that it was PW-3 Rasheed who had gone and informed them about the incident, he has held that it would be reasonable to hold that PW-1 and PW-2 went to spot only after learning from PW-3 about this incident. The High Court has completely discarded the testimony of PW-3.

14. In our opinion the view taken by the learned Sessions Judge that it would be unsafe to rely upon the testimony of PW-3 regarding the actual factum of incident is not correct. A boy aged 8/9 years would be near his mother and would be sleeping in the same house where she was sleeping. There was no occasion for him to go the house of Jain Bi and to sleep with her. If PW-3 was not present in the house and was in the house of her grand-mother in the night in question, he could not have conveyed the information about the incident to PW-1 and PW-2 nor they would have come to know about the incident forthwith. If PW-3 was present in the house he was bound to witness the incident, namely picking up quarrel by the accused with his wife and setting her on fire. There was absolutely no reason why PW-3 would give a false statement against his own father that he had tied the hands and legs of his mother and had burnt her. We are of the opinion that the testimony of PW-3 is fairly reliable on the factum of the incident and the same cannot be discarded only on account of a stray

sentence in his cross-examination where he has stated that when his mother caught fire he was in his grand-mother's house. The High Court did not examine the testimony of this witness carefully and we find ourselves unable to agree with the view taken by it.

15. The other important piece of evidence against the accused is that of dying declarations and the most important one is that which was made by her to PW-12 Dr. K.M. Nagabhushan, Assistant Surgeon in the Victoria Hospital, Bangalore. He was the first doctor to examine her when she reached there at 9.30 a.m. The witness has clearly stated that the deceased gave her own statement with regard to the history and stated that she sustained burn injuries when her husband poured kerosene and set her on fire on the same day at 4.00 a.m. He recorded all these facts in the Accident Register and relevant extract of the same has been brought on record and has been proved by him as Ex/P-12. There is absolutely no reason to discard the testimony of PW-12, who is a responsible government servant. The other two dying declarations were recorded by PW-11 B.K. Krishnappa A.S.I. Victoria Police Station on July 24, 1986 and by PW-14 Kumar Swamy, P.S.I. Anekal Police Station on July 26, 1986. These are fairly long dying declarations where she gave the background of the incident and also stated the fact that the accused picked up a quarrel in the morning of July 24, 1986 and thereafter after pouring kerosene set her on fire. These two dying declarations were recorded in the presence of PW-5 Dr. Rangarajan who was Assistant Surgeon in the Victoria Hospital at the relevant time. He made an endorsement that the dying declaration was recorded in his presence and thereafter he put his signature on the same. He has made a categorical statement that at the time when the statement of the deceased was being recorded on both the occasions, she was conscious and was in a fit condition to make a statement. In our opinion the aforesaid three dying declarations are wholly trustworthy and there is absolutely no reason at all to discard the same. Though PW-2 Syed Akbar and PW-6 Abdul Razak, who reached the spot in the village immediately after the occurrence, have also stated in their statements that the deceased told them that it was the accused who had set fire to her and their testimony in our opinion is trustworthy, but even if we do not take into consideration the aforesaid oral dying declaration of the deceased, the three dying declarations referred to above, are quite sufficient to fasten the liability upon the accused.

16. Now we may consider the reasons given by the High Court for discarding the dying declarations. One of the main reason is that the police officers PW-11 and PW-14 were not justified in recording the dying declarations themselves when the patient was in the Victoria Hospital at Bangalore and they could have easily secured the services of a Magistrate to record the same. The second reason is that the statements recorded by PW-11 and PW-14 are in a narrative form and the third reason is that the deceased while making the statement was speaking in Kannada and Urdu languages, but Exh. P-11 and P-4 have been recorded in Kannada language only. The High Court discarded the statement of PW-12 Dr. K.M. Nagabhushan on the ground that by the time her statement was recorded, a period of six hours had elapsed and as she had sustained 67% burn injuries, it was not possible to accept that the deceased gave any statement to him.

The earliest case in which the law on the point of dying declaration was considered in detail by this Court is ***Khushal Rao v. State of Bombay, A.I.R. 1958 S.C. 22.*** The Court ruled 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; each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; 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

of evidence. It has been further held that 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. But once, the Court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration.

17. In ***State of Uttar Pradesh v. Ram Sagar Yadav, 1985(1) R.C.R.(Crl.) 600 (S.C.) : A.I.R. 1985 S.C. 416,*** the Court speaking through Chandrachud C.J. held as under :

"It is well settled that, as a matter of law, a dying declaration can be acted upon without corroboration. See ***Khushal Rao v. State of Bombay, 1958 S.C.R. 552 : (A.I.R. 1958 S.C. 22); Harbans Singh v. State of Punjab, 1962 Supp.(1) S.C.R. 104 : (A.I.R. 1962 SC 439); Gopalsingh v. State of M.P., (1972)3 S.C.C. 268 : (A.I.R. 1972 S.C. 1557).*** There is not even a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated. The primary effort of the Court has to be find out whether the dying declaration is true. If it is, no question of corroboration arises. It is only if the circumstances surrounding the dying declaration are not clear or convincing that the Court may, for its assurance, look for corroboration to the dying declaration....."

18. In ***K. Ramachandra Reddy & Anr. v. The Public Prosecutor, 1976(3) S.C.C. 618*** it was held that a 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. It was further held that the Court must be satisfied that the deceased was in a fit state of mind to make the statement after the deceased had a clear opportunity to observe and identify his assailants 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. In ***Pothakamuri Srinivasulu v. State of A.P., 2002(6) S.C.C. 399,*** it has been held that if the deceased made statement to the witnesses and their testimony is found to be reliable the same is enough to sustain the conviction of the accused. In ***Mafabhai Nagarbhai Raval v. State of Gujarat, 1992(2) RCR(Criminal) 505 (SC) : A.I.R. 1992 S.C. 2186*** it was held that the Doctor who has examined the victim was the most competent witness to speak about her condition.

19. It is true that PW-11 and PW-14 were Police personnel and a Magistrate could have been called to the hospital to record to dying declaration of Muneera Begum, however, there is no requirement of law that a dying declaration must necessarily be made to Magistrate. In ***Bhagirath v. State of Haryana, 1997(1) RCR(Criminal) 142 (SC) : A.I.R. 1997 S.C. 234*** on receiving message from the hospital that a person with gun shot injuries had been admitted a head constable rushed to the place after making entry in the police register and after obtaining certificate from the doctor about the condition of the injured took his statement for the purposes of registering the case. It was held that the statement recorded by the head constable was admissible as dying declaration. Similar view was taken in ***Munnu Raja & Anr. v. State of Madhya Pradesh, 1976(2) S.C.R. 764,*** wherein the statement made by the deceased to the investigating officer at the police station by way of First Information Report, which was recorded in writing, was held to be admissible in evidence.

20. The other reason given by the High Court is that the dying declaration was not in question-answer form. Very often the deceased is merely asked as to how the incident took place and the

statement is recorded in a narrative form. In fact such a statement is more natural and gives the version of the incident as it has been perceived by the victim. The question whether a dying declaration which has not been recorded in question-answer form can be accepted in evidence or not has been considered by this Court on several occasions. In ***Ram Bihari Yadav v. State of Bihar & Ors., 1998(2) RCR(Criminal) 403 (SC) : (1998)4 S.C.C. 517,*** it was held as follows :

"It cannot be said that unless the dying declaration is in question-answer form, it could not be accepted. Having regard to the sanctity attached to dying declaration as it comes from the mouth of a dying person though, unlike the principle of English law he need not be under apprehension of death. It should be actual words of the maker of the declaration. Generally, the dying declaration ought to be recorded in the form of questions and answers but if a dying declaration is not elaborate but consists of only a few sentence and is in the actual words of the maker the mere fact that it is not in question-answer form cannot be a ground against its acceptability or reliability. The mental condition of the maker of the declaration, alertness of mind, memory and understanding of what he is saying, are matters which can be observed by any person. But to lend assurance to those factors having regard to the importance of the dying declaration, the certificate of a medically trained person is insisted upon....."

21. In ***Padmaben Shamalbhai Patel v. State of Gujarat, 1991(1) R.C.R.(Crl.) 487 : 1991(1) S.C.C. 744,*** it was held that the failure on the part of the medical men to record the statement of the deceased in question and answer form cannot in any manner affect the probative value to be attached to their evidence. This view was reiterated in ***State of Rajasthan v. Bhup Ram, 1997(1) RCR(Criminal) 760 (SC) : 1997(1) Crimes 62*** and ***Jai Prakash & Ors. v. State of Haryana, 1998(3) R.C.R.(Crl.) 785 : 1998(7) S.C.C. 284.***

22. We are a little surprised that the High Court took the view that having regard to the nature of injuries sustained by the deceased she could not have been in a position to make a statement. PW-12 Dr. K.M. Nagabhushan clearly recorded in the Accident Register that the patient was conscious, her orientation was good and that she answered well to the questions. He also noted that her pulse was 86/minute, CVS/RS was NAD. PW-5 Dr. Rangarajan before whom the statements of the victim were recorded by PW-11 and PW-14 on 24th and 26th July, 1986 respectively deposed that she was able to speak. He clearly stated that it is not true that the victim was not in a condition to make statement or that she was unconscious. In view of this clear statement of the Doctor that the victim was in a position to make a statement, the High Court, in our opinion, erred in discarding the dying declarations merely on the basis of her injury report and post-mortem examination report. PW-4 Dr. K.H. Manjunath who had performed the post-mortem examination, had merely stated that he was not in a position to say if the victim was in a position to talk after sustaining the injuries and till she died. The last ground given by the High Court is regarding the language spoken by the deceased. PW-5 Dr. Rangarajan has stated in paras 2 and 3 of his statement that the victim was answering in Kannada language in which language her statement was recorded by PW-11 and PW-14. We are therefore of the opinion that the view taken by the High Court is wholly perverse and also contrary to settled principles of law and therefore cannot be sustained.

23. In the result the appeal succeeds and is hereby allowed and the impugned judgment and order of the High Court is set aside and that of the learned Sessions Judge is restored. The accused-respondent shall surrender and undergo the sentence imposed by the learned Sessions Judge. The Chief Judicial Magistrate concerned shall take immediate steps to take the accused-respondent is custody. Shri Ajay Kumar Jain, learned Advocate, who appeared Amicus Curiae has rendered valuable assistance in deciding this case and we are beholden to him.

Appeal allowed.