SUPREME COURT OF INDIA

Nallapati Sivaiah

Vs.

Sub-Divisional Officer, Guntur, A. P.

(R. V. Raveendran and B. Sudershan Reddy, JJ.)

Crl.A.No.1315 of 2005

26.09.2007

JUDGEMENT

B. SUDERSHAN REDDY, J.:-

1. This appeal arises out of judgment dated 30th March, 2005 of the High Court of Andhra Pradesh at Hyderabad in Criminal Appeal No. 193/2003. The appellant and two others were tried for having committed the murder of Dasari Srinivasa Rao alias Bujji by hacking him with knives. The appellant and the two others were also tried for various offences including the one punishable under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Accused No.2 was acquitted of all the charges by the learned Sessions Judge, Guntur. The learned Sessions Judge however convicted the appellant and another (A.3) for the offence punishable under Section 302 IPC and were sentenced to imprisonment for life. They were also fined Rs.5,000/- in default, each has to suffer rigorous imprisonment for two months. Both of them were acquitted of the charges framed under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The appellant and accused No.3 preferred Criminal Appeal Nos.193/03 and 161/03 respectively. The High Court upon appreciation of the evidence on record confirmed the conviction of the appellant under Section 302 IPC and accordingly confirmed the sentence of the life imprisonment. The Criminal Appeal No. 161/03 preferred by A.3 was allowed setting aside the

conviction and sentence imposed upon him. The sole appellant who is A.1 has preferred this Criminal Appeal by Special leave, challenging his conviction and sentence under Section 302 IPC.

2. The case of the prosecution in nutshell is that the deceased Dasari Srinivasa Rao alias Bujji was an accused in a case relating to the murder of brother of the appellant. On 05.01.1998 at about 4.30 or 5.00 p.m, the three accused including the appellant herein chased the deceased and attacked him with knives while he was returning from Vishnupriya Cinema theatre, Gorantala, Guntur, after seeing a movie causing multiple injuries leading to his death. The Sub-Inspector of Police (P.W. 9) reached the scene of offence by 5.30 p.m. and found the injured (deceased) on the road. He shifted him to Guntur General Hospital. At about 6.00 p.m., P.W.9 recorded a Dying Declaration (Ex.P-10) in which the deceased implicated the appellant and four others. That another dying declaration was recorded by the 6th Additional Magistrate, Guntur (P.W.7) which commenced at 6.35 p.m. on 05.01.1998. The victim succumbed to the injuries and died at about 9.30 p.m. on the same day in the hospital. P.W.10 Professor and Doctor of Forensic Medicine conducted the post-mortem examination on 06.01.1998. Ex.P-18 is the post-mortem Report issued by him. He found as many as 63 injuries on the body of the deceased. He expressed his opinion that the cause of death was due to multiple injuries. P.W.11 continued the investigation and filed charge-sheet against the appellant and two others.

3. The prosecution examined 11 witnesses. P.W.1 to 4 were alleged to be the direct eye-witness (the Supervisor of the cinema theatre, owners of a Hotel and tea stall on the road side near the cinema theatre and person who accompanied the deceased to the movie). All of them turned hostile and did not support the prosecution case. P.W.5, the mother of the deceased speaks only about the motive. Therefore, the entire prosecution case rests upon the dying declarations in Ex.P-8 and Ex.P-10 recorded respectively by P.W.7 and P.W.9. The Sessions Court as well as the High Court relying upon the dying declarations convicted the appellant. The High Court found that before the dying declarations were recorded "opinions of the doctors attending on the deceased were also obtained in Ex.P-7 and Ex.P-11, which clearly show that the deceased was fit enough to make the statement when these dying declarations were recorded. Strange are the ways in which human bodies react to different situations. Though superficially it appears that with 63 injuries on the body of a person he would not be in a position to make a statement but it appears that he was fit enough to make a statement." The High Court came to the conclusion that the dying declarations contained truthful statement of a dying man. The High Court accordingly confirmed the conviction passed by the trial court as against the appellant.

It is convenient now to return to the critical submissions made at the bar.

SUBMISSIONS :

4. Ms. Nitya Ramakrishna, learned counsel appearing for the appellant argued with vehemence that the two dying declarations cannot be relied upon inasmuch as Dr. T. Narasimha Rao, the Casualty Medical officer, Government General Hospital, Guntur who examined and allegedly certified about

the fitness of the deceased to give statement, was not examined as a witness. There is no evidence on record indicating the physical and mental condition of the deceased to the effect that he was in a fit condition to make the statement. The learned counsel also highlighted the inconsistencies between the two dying declarations namely one recorded by the Police Officer (P.W.9) and another by the learned Judicial First Class Magistrate (P.W.7). The learned counsel also further urged that the evidence of P.W. 10 Professor of Forensic Medicine who conducted the post-mortem which is relevant and material has altogether been ignored by the courts below.

5. Ms. D. Bharathi Reddy, learned counsel for the respondent on the other hand submitted that the dying declarations which have been relied upon by the High Court in the facts and circumstances have been rightly held to be a truthful and voluntary and, therefore, in law, can form the sole basis for conviction. The learned counsel strenuously contended that the dying declaration recorded by the Magistrate cannot be held to be a doubtful one. Besides the learned counsel submitted that the doctor did make an endorsement in both the dying declarations certifying that the deceased was in a fit condition to make statement and was present at the time of recording of the statement. Non examination of the doctor is not fatal to the prosecution case was the submission.

POINT FOR CONSIDERATION :

6. In view of the rival submissions made during the course of the hearing of the appeal, only one question really arises for our consideration, namely, whether the two dying declarations can be held to be true and voluntary and can be relied upon to convict the appellant ? Whether the dying declarations suffer from any serious infirmities requiring their exclusion from consideration ?

7. In order to consider the said question it is just and necessary to notice the contents of both the dying declarations. Ex.P-10 Dying Declaration recorded by Police Officer P.W.9 on 05.01.1998 at 6.00 p.m. at Casualty, Guntur General Hospital is to the following effect:

".....This day i.e. on 5.1.1998 Noon having went to the cinema in the cinema hall situated at Gorantla; having witnessed the Cinema came out, there Sivayya the younger brother of Ankamma, resident of Koritepadu and Rajka by caste and four others came upon me and of them Nallapaati Sivayya cut my face and head with hunting-sickle. The remaining 4 persons cut me with hunting sickles (VETAKODAVLU) indiscriminately, on my legs and hands. I am an accused in the Ankamma's murder case. Keeping it in mind, they cut me like this. The time was 4.30 5.00 hours. I cannot sign as there (are) cut-injuries on my two hands. I can subscribe the right thumb impression....."

Dr. T. Narasimharao, C.M.O., Guntur General Hospital, made an endorsement as "Pt. Conscious

coherent, fit mind to give statement."

8. The Inspector of Police P.W.9 in his evidence stated that the deceased was profusely bleeding and his condition was precarious even when the deceased was shifted to Guntur General Hospital. He did not verify from the deceased as to whether he was in a fit condition to give his statement. He noticed number of persons gathering around the victim at the scene of occurrence. He did not verify the case sheet. He was not aware as to whether any treatment has been administered to the victim. He commenced recording the Dying Declaration (Ex.P-10) at 6.00 p.m. and completed it by 6.25 p.m.

9. Ex.P-8 is the dying declaration recorded by the learned VIth Additional Magistrate, Guntur (P.W.7) in which the learned Magistrate certified that the declarant was conscious, coherent and in a fit condition to give statement. It is in his evidence that he did not verify from the doctor as to whether the victim was in a fit condition to make the statement before commencing the recording of dying declaration. He also did not verify the case sheet. Even on the second Dying Declaration, Dr. T. Narasimharao made an endorsement to the effect that "patient is conscious and coherent. Fit mind to give statement while recording his statement. Statement recorded in my presence. Multiple cut injuries on both hands and blood is oozing." The material part of the dying declaration Ex.P-8 is to the following effect :

".....This day evening at 5.00 hours time I went to the Cinema Hall at Gorantla with an intention to see cinema. By the time I went to the Vishnu Priya Cinema Hall, Nallapati Sivayya and other three persons whom I do not know, all four in total came and cut me indiscriminately with hunt sickles. A number of people are there. But none came to my rescue. I fell down for those hits. Then some police having reached brought me to the hospital. This is the matter occurred....."

10. The learned Magistrate in his evidence stated that he received the requisition from Casualty Medical Officer on 05.01.1998 at 6.25 p.m. to record the dying declaration of the victim. He immediately rushed to the hospital and identified the victim through the Casualty Medical officer Dr. T. Narasimharao. He did not verify the case sheet either before or after recording the statement. He admitted that before recording the Dying Declaration (Ex.P-8), he did not obtain any certificate or endorsement of the doctor as to the fitness of the victim to give statement. The Magistrate found multiple cut injuries on both hands, thumbs and right foot and in the circumstances obtained the left great toe impression on Ex.P-8. It is specifically stated by him that the blood was oozing from both the hands and it was difficult to obtain either left or right thumb impression of the declarant.

11. An objective and critical assessment of the material available on record discloses that recording of dying declarations commenced immediately after the victim was taken to the hospital right from 6.00 p.m. onwards and went on till 7.10 p.m. It means the victim was speaking coherently right from 6.00 p.m. to 7.10 p.m. on 05.01.1998. It is not known as to what was the treatment

administered to the victim immediately after he was brought to the hospital. No explanation is forthcoming as to why duty doctor at Casualty was not examined. There is no evidence of treatment if any given to the victim except the routine and mechanical endorsement that patient was conscious and coherent and fit to give statement.

12. Be it noted that there is no evidence by any of the doctor as to when the deceased succumbed to the injuries except that he was found dead at 9.30 p.m., that is to say, within two hours from the time of recording of Ex.P-8 Dying Declaration.

13. It may also be noted that altogether 63 injuries were found on the body of the victim including injuries 1 to 13 and 19 on the parietal and occipital regions, which were grievous in nature. Injuries 1 to 22 were on the neck and above neck. According to the evidence of P.W.10 Professor and Doctor of Forensic Medicine, who conducted the post-mortem examination, diffused subarchanoid haemorrhage was present all over the brain. He stated that subarchanoid haemorrhage results in patient going into coma and persons receiving such injuries cannot be coherent. He further stated in his evidence that on account of bleeding from injury of cut laceration 15 X 2 cms. bone deep present on both the sides of maxillary and middle of nose the patient would be gasping for breath and will not be in a position to take respiration through nose but can breath through mouth. The deceased might have died within one or two hours after receiving the injuries mentioned in Ex.P-18 Post-mortem examination. The evidence of this witness suggest that the victim could not have deposed for such a long duration of about an hour continuously. His condition was found to be precarious by Inspector of Police (P.W.9) even at 5.30 p.m.

Evidentiary value of Dying Declaration :

14. There is a historical and a literary basis for recognition of dying declaration as an exception to the Hearsay Rule. Some authorities suggest the rule is of Shakespearian origin.

15. In "The Life and Death of King John", Shakespeare has Lord Melun utter what a "hideous death within my view, retaining but a quantity of life, which bleeds away,..lost the use of all deceit" and asked,"Why should I then be false, since it is true that I must die here and live hence by truth?" William Shakespeare, The Life and Death of King John act. 5, sc.2, lines 22-29.

16. In passing upon admissibility of an alleged dying declaration, all attendant circumstances should be considered, including weapon which injured the victim, nature and extent of injuries, victim's physical condition, his conduct, and what was said to and by him.

17. This Court has consistently taken the view that where a proper and sufficient predicate has been established for the admission of a statement under dying declaration, Hearsay exception is a mixed question of fact and law.

18. It is equally well settled and needs no restatement at our hands that dying declaration can form the sole basis for conviction. But at the same time due care and caution must be exercised in considering weight to be given to dying declaration in asmuch as there could be any number of circumstances which may affect the truth. This court in more than one decision cautioned that the courts have always to be on guard to see that the dying declaration was not the result of either tutoring or prompting or a product of imagination. It is the duty of the courts to find that the deceased was in a fit state of mind to make the dying declaration. In order to satisfy itself that the deceased was in a fit mental condition to make the dying declaration, the courts have to look for the medical opinion.

19. It is not difficult to appreciate why dying declarations are admitted in evidence at a trial for murder, as a striking exception to the general rule against hearsay. For example, any sanction of the oath in the case of a living witness is a thought to be balanced at least by the final conscience of the dying man. Nobody, it has been said, would wish to die with a lie on his lips. A dying declaration has got sanctity and a person giving the dying declaration will be last to give untruth as he stands before his creator. There is a legal maxim "Nemo Moriturous Praesumitur Mentire" meaning, that a man will not meet his maker with lie in his mouth. Woodroffe and Amir Ali, in their treatise on Evidence Act state : "when a man is dying, the grave position in which he is placed is held by law to be a sufficient ground for his veracity and therefore the tests of oath and cross-examination are dispensed with."

20. The court has to consider each case in the circumstances of the case. What value should be given to a dying declaration is left to court, which on assessment of the circumstances and the evidence and materials on record, will come to a conclusion about the truth or otherwise of the version, be it written, oral, verbal or by sign or by gestures. It is also a settled principle of law that dying declaration is a substantive evidence and an order of conviction can be safely recorded on the basis of dying declaration provided the court is fully satisfied that the dying declaration made by the deceased was voluntary and reliable and the author recorded the dying declaration as stated by the deceased. This court laid down the principle that for relying upon the dying declaration the court must be conscious that the dying declaration was voluntary and further it was recorded correctly and above all the maker was in a fit condition - mentally and physically - to make such statement.

21. In Smt. Paniben v. State of Gujarat1, this court while stating that a dying declaration is entitled to great weight however cautioned to note that the accused has no power to cross-examination.
1992 AIR SCW 2050, Para 17

1 (1992) 2 SCC 474.

"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 v. State of M.P.) (1976) 3 SCC 104; 1976 SCC (Cri.)376; (1976) 2 SCR 764. AIR 1976 SC 2199

(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. v. Ram Sagar Yadav) (1985) 1 SCC 552 : 1985 SCC (Cri) 127: AIR 1985 SC 416; Ramavati Devi v. State of Bihar (1983) 1 SCC 211: 1983 SCC (Cri) 169: AIR 1983 SC 164.

(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (K. Ramchandra Reddy v. Public Prosecutor) (1976) 3 SCC 618: 1976 SCC (Cri) 473:AIR 1976 SC 1994.

(iv) Where dying declaration is suspicious it should not be acted upon without AIR 1974 SC 332 corroborative evidence. (Rasheed Beg v. State of M.P., (1974) 4 SCC 264 : 1974 SCC (Cri) 426).

(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 v. State of M.P.) 1981 Supp. SCC 25 : 1981 SCC (Cri.) 645 : AIR 1982 SC 1021.

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P.) (1981) 2 SCC 654 : 1981 SCC (Cri) 581.

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurti Laxmipati Naidu) 1980 Supp. SCC 455 : 1981 SCC (Cri) 364 : AIR 1981 SC 617.

(viii) Equally, merely because it is a brief statement, it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth. (Surajdeo Oza v. State of Bihar) 1980 Supp. SCC 769 : 1979 SCC (Cri) 519 : AIR 1979 SC 1505.

(ix) Normally the court 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 eye-witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanahau Ram and Anr. v. State of M.P.) 1988 Supp. SCC 152 : 1988 SCC (Cri) 342 : AIR 1988 SC 912.

(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. v. Madan Mohan) (1989) 3 SCC 390 : 1989 SCC (Cri) 585 : AIR 1989 SC 1519."

22. In K. Ramachandra Reddy and another v. The Public Prosecutor2, the court having noticed the evidence of P.W.20 therein who conducted the post-mortem that there were as many as 48 injuries on the person of the deceased out of which there were 28 incised wounds on the various parts of the body including quite a few gaping incised injuries came to the conclusion that in view of those serious injuries it was difficult to believe that the deceased would have been in a fit state of mind to make a dying declaration. It was also a case where the Magistrate did not put a direct question to the injured whether he was capable mentally to make any statement. In the circumstances this court came to the conclusion that the Magistrate committed a serious irregularity in "not putting a direct question to the injured whether he was capable mentally to make any statement." It has been observed that even though the deceased might have been conscious in the strict sense of the term, "there must be reliable evidence to show, in view of his intense suffering and serious injuries, that he was in a fit state of mind to make statement regarding the occurrence." The certificate issued by the doctor that the deceased was in a fit state of mind to make statement by itself would not be sufficient to dispel the doubts created by the circumstances and particularly the omission by the Magistrate in not putting a direct question to the deceased regarding the mental condition of the injured. AIR 1976 SC 1994

2 (1976) 3 SCC 618

23. In the case in hand before the actual recording of Ex.P-8 dying declaration, the Magistrate (P.W.7) did not seek and obtain any opinion and a certificate or endorsement from the duty doctor as to the physical and mental condition of the declarant to give statement. The Magistrate did not put any question as to whether the declarant was making a voluntary statement and whether he was in a fit condition to make the statement and whether any sedatives had been administered.

24. In Padman Meher and anr. v. State of Orissa3 relying upon the evidence of doctor expressing the opinion that after receiving the injury the victim would not be able to talk and the injury would have caused great shock and part of the body could have been paralysed, this court came to the conclusion that the nature of the injury was such that whether death was instantaneous or not, the shock would have been such that the deceased would not have been in a position to talk. AIR 1981 SC 457

3 (1980) Supp SCC 434.

25. In Darshan Singh alias Bhasuri and Ors. v. State of Punjab4, relying on the evidence of the Medical Officer who conducted the post-mortem examination on the body of victim to the effect that the victim's vital AIR 1983 SC 554 organs like peritoneum, stomach and spleen were completely smashed and that there were remote chances of his remaining conscious after receipt of such injury, this court observed "it is impossible to believe that he was in a fit state of mind and body to make any kind of coherent or credible statement relating to the circumstances which resulted in his death. True, he was quite near his Creator, dangerously so indeed, and we may accept that his mind was then free from failings which afflict the generality of human beings, like involving enemies in false charges. But; was too ill to entertain any thoughts, good or bad, and he could not possibly even in a position to make any kind of intelligible statement." The court accordingly refused to place any reliance on the dying declaration and excluded the same from consideration.

4 (1983) 2 SCC 411.

26. In Kanchy Komuramma v. State of A.P.5, this court while considering the evidentiary value of a dying declaration noted that the prosecution for reasons best known to it did not examine the doctor who made the endorsement on dying declaration certifying that "the patient was in a fit state of mind to depose" and having further noticed that no other witness was examined to prove the certificate of the doctor held that the same creates a doubt as to whether the patient was actually in a proper mental condition to make a consciously truthful statement. It was held :

5 (1995) 4 SCC 118.

"This infirmity renders it unsafe to rely on the dying declaration. As a matter of fact, the failure of the prosecution to establish that the deceased, before she made the dying declaration, was in proper mental condition to make the dying declaration detracts materially from the reliability of the dying declaration and it would not be safe to rely upon it. That the dying declaration has been recorded by Judicial Magistrate, by itself is not a proof of truthfulness of the dying declaration, which in order to earn acceptability has still to pass the test of scrutiny of the court. There are certain safeguards which must be observed by a magistrate when requested to record a dying declaration. He must record the dying declaration satisfying himself that the declarant is in a proper mental state to make the statement. He must also obtain the opinion of the doctor, if one is available, about the fitness of the patient to make a statement and the prosecution must prove that opinion at the trial in the manner known to law."

(Emphasis supplied)

27. We may now refer to the decisions upon which strong reliance was placed by the learned counsel for the State in support of her submissions that the Dying Declaration recorded by the Magistrate cannot be held to be unreliable merely because the doctor who issued the certificate regarding fitness has not been examined by the prosecution. A three Judges Bench of this court in Koli Chunilal Savji and Anr. v. State of Gujarat6while referring to the judgment this court in Maniram v. State of M.P.7, in which this court held that when the declarant was in the hospital itself, it was the duty of the person recording the dying declaration to do so in the presence of the doctor and after being duly certified by the doctor that the declarant was conscious and in his senses and was in a fit condition to make the declaration observed that the said requirements "are of merely rule of prudence and the ultimate test is whether the dying declaration can be held to be a truthful one and voluntarily given." This court took the view that non-examination of the doctor and the doctor not making any endorsement on the dying declaration itself is no ground to exclude the dying declaration from consideration. This observation is to be understood in the factual background and the circumstances in that case in which the Magistrate who recorded the dying declaration, in his evidence categorically stated that the doctor introduced the victim and when she asked the doctor about the condition of the victim, the said doctor categorically stated that the victim was in a conscious condition. The doctor made an endorsement on the Police yadi indicating that victim was fully conscious. It was a case where the doctor certified about the condition of the victim before the learned Magistrate undertook to record the dying declaration. That apart there were two dying declarations corroborating each other and there was no inconsistency in those two dying declarations made. 1999 AIR SCW 3727

1994 AIR SCW 211

6 (1999) 9 SCC 562.

7 (1974) Supp 2 SCC 539.

28. In Laxman v. State of Maharashtra8, a Constitution Bench of this court held : 2002 AIR SCW 3479, Para 3

8 (2002) 6 SCC 710.

"The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or promoting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a magistrate absolutely necessary, although to assure authenticity it is usual to call a magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise."

[Emphasis supplied]

29. The Constitution Bench in its authoritative pronouncement declared that there is no requirement of law that dying declaration must necessarily contain a certification by the doctor that the patient was in a fit state of mind especially when a dying declaration was recorded by a Magistrate. It is the testimony of the Magistrate that the declarant was fit to make the statement gains the importance and reliance can be placed upon declaration even in the absence of the doctor provided the court ultimately holds the same to be voluntary and truthful. The judgment does not lay down a proposition that medical evidence, even if available on record, as also the other attending

circumstances should altogether be ignored and kept out of consideration to assess the evidentiary value of a dying declaration whenever it is recorded by a Magistrate. The Constitution Bench resolved the difference of opinion between the decisions expressed by the two Benches of three learned Judges in Paparambaka Rosamma and Ors. v. State of A.P.9and Koli Chunilal Savji and Anr. v. State of Gujarat (supra) and accordingly held that there is no requirement of law that there should be always a medical certification that the injured was in a fit state of mind at the time of making a declaration and such certification by the doctor is essentially a rule of caution and even in the absence of such a certification the voluntary and truthful nature of the declaration can be established otherwise. 1999 AIR SCW 3440

1999 AIR SCW 3727

9 (1999) 7 SCC 695

30. This court in Shanmugam alias Kulandaivelu v. State of Tamil Nadu10held the proposition laid down in Paparambaka Rosamma v. State of A.P. that "in the absence of medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept subject to the satisfaction of a Magistrate" is no longer good law in view of the larger Bench decision in Laxman v. State of Maharashtra. It is further held the mere fact that the doctor, in whose presence dying declaration was recorded, was not examined does not affect the evidentiary value to be attached to the dying declaration. Neither of the decisions held that the medical evidence, if any, is available on record and the 2002 AIR SCW 4653

2002 AIR SCW 3479 attending circumstances altogether be ignored merely because dying declaration has been recorded by a Judicial Magistrate.

10 (2002) 10 SCC 4.

PECULIAR FEATURES OF THIS CASE :

31. In the light of the stated legal principles we now proceed to discuss the peculiar and striking features found in the case in hand. There are two dying declarations, one recorded by Police Officer P.W.9 in Ex.P-10 and another by the Magistrate P.W.7 in Ex.P-8. The incident of attack on the deceased is alleged to have taken place at about 5.00 p.m. on 05.01.1998. The first dying declaration in Ex.P.10 has been recorded at 6.00 p.m. at Casualty, Guntur Hospital, Guntur. The victim stated that on 05.01.1998 in the afternoon he went to see a cinema in the cinema hall situated at Gorantala; "having witnessed the cinema came out. Sivayya, the younger brother of Ankamma, resident of Koritepadu and Rajka by caste and four others came upon me and all of them cut my face and head with hunting sickles. The remaining four persons cut me with hunting sickles indiscriminately on my legs and hands." He affixed his right thumb impression on the declaration. There is a certificate

at the end of the dying declaration issued by Casualty Medical Officer to the effect that "Patient conscious, coherent, fit mind to give statement." In the second dying declaration recorded by Judicial Magistrate of First Class P.W.7 in Ex.P8 the victim stated that he went to the cinema hall at Gorantala in the evening at 5.00 p.m. with an intention to see cinema. There Nallapati Sivayya (appellant) and other three persons, whom he cannot identify, in all four in number came and cut him indiscriminately with hunting sickles; and though number of people were present at the place of incident, none came to his rescue. He also stated that he was one of the accused in Ankamma's murder case and for that reason Sivayya who is known to be his younger brother developed grudge and cut him with sickle along with three persons. The recording of this second dying declaration commenced at 6.35 p.m. on 05.01.1998 and completed by 7.10 p.m. The Judicial First Class Magistrate made an endorsement to the effect that he obtained the great toe impression of left foot of the victim as his both hands and his right foot were bleeding with multiple cut injuries and blood was oozing from them. The victim did not state anything about the dying declaration recorded by P.W.9 in Ex.P-10. In Ex.P-10 recorded by the police officer, he implicated the appellant and four others and stated that appellant has cut his face and head with hunting sickle and the other four cut his legs and hands with hunting sickles. In the second Dying Declaration (Ex.P-8) he implicated the appellant and only three other persons. He made omnibus allegations against the appellant and three other persons and not four other persons as stated in the first Dying Declaration. It is strange that at 6.35 p.m. he was able to affix his right thumb impression but could not do so at 7.10 p.m when it is clear that blood was oozing on account of multiple cut injuries from his both hands and right foot. In the first dying declaration he allegedly stated that he went to see cinema in the noon and came out of the theatre around 5.00 O'clock but in the second Dying Declaration he allegedly stated that he went to see the cinema at around 5.00 p.m. in the evening and at that time the incident had taken place.

32. In the circumstances can it be said that the victim was conscious and coherent and in a fit condition to give the statement? This aspect of the matter is required to be considered in the background of victim receiving as many as 63 injuries on his body including injuries 1 to 13 and 19 on the parietal and occipital regions on account of which the victim could have gone into coma. The Professor of Forensic Medicine and Medical Officer who conducted the post-mortem, examined as P.W.11, is an important witness whose evidence has been altogether ignored. He found diffused subarchanoid haemmorrhage present all over the brain which normally results in patient going into coma. He also expressed his opinion that the deceased must have died within one or two hours after receiving the injuries. Can we ignore this vital piece of evidence ? Do we have to accept that the victim having received 63 multiple injuries went on speaking coherently from 6.00 p.m. onwards till 7.10 p.m., for about one hour and ten minutes? There is no evidence and details of any treatment administered to the victim. Dr. B.G. Sugunavathi, Casulalty Doctor, first noticed the victim dead at 9.30 p.m. on 05.01.1998 itself. There is no positive evidence as to when the victim died even though he was admitted into the hospital with multiple injuries. These cumulative factors and surrounding circumstances make it impossible to rely upon the dying declarations that were recorded in Ex.P-10 and Ex.P-8. These are the circumstances which compel us not to ignore the evidence of P.W.10 - Doctor and Professor of Forensic Medicine. It is not a question of choosing between the eye-witness account as regards the condition of the victim to make a statement on the one hand and the evidence of the Professor and Doctor of Forensic Medicine. The conflict and inconsistency between the two dying declarations and the evidence of the Forensic Expert which remained unimpeached raises a very great suspicion in the mind of the court.

33. It is the duty of the prosecution to establish the charge against the accused beyond reasonable doubt. The benefit of doubt must always go in favour of the accused. It is true that dying declaration is a substantive piece of evidence to be relied on provided it is proved that the same was voluntary and truthful and the victim was in a fit state of mind. The evidence of Professor of Forensic Medicine casts considerable doubt as regards the condition of the deceased to make a voluntary and truthful statement. It is for that reason non-examination of Dr. T. Narasimharao, Casualty Medical Officer, who was said to have been present at the time of recording of both the Dying Declarations attains some significance. It is not because it is the requirement in law that the doctor who certified about the condition of the victim to make a Dying Declaration is required to be examined in every case. But it was the obligation of the prosecution to lead corroborative evidence available in the peculiar circumstances of the case.

34. This court in Sabbita Satyavathi v. Bandala Srinivasarao and Ors.11refused to place reliance upon the dying declaration of the victim recorded by the Assistant Civil Surgeon at Government Hospital where the deceased was brought in injured condition. The court came to the conclusion that having regard to the injuries sustained by the deceased he would not have been in a position to make any statement even if he was alive when brought to the hospital. He must have become unconscious soon after suffering the injuries and there was no question of his either making a statement before P.W.1 or before the Medical Officer. Medical Officer admitted that the death of the deceased was due to injuries to vital organs such as heart and lung. This court having regard to nature of injuries, entertained a serious doubt as to whether the injured could have given two dying declarations as alleged by the prosecution, one at about 7.00 p.m. and another at about 8.45-9.00 p.m. The court relied upon the medical evidence on record inasmuch as doctor herself stated that if such an injury is caused to heart the injured would become unconscious immediately. There was, therefore, no question of his making a dying declaration to anyone thereafter. 2004 AIR SCW 3774

11 (2004) 10 SCC 620.

35. In State of Haryana and Ors. v. Ram Singh and Anr.12this court while considering the significance of the evidence of the doctor observed : 2002 AIR SCW 219, Para 1

12 (2002) 2 SCC 426.

"While it is true that the post-mortem report by itself is not a substantive piece of evidence, but the evidence of the doctor conducting the post-mortem can by no means be ascribed to be insignificant. The significance of the evidence of the doctor lies vis-a-vis the injuries appearing on the body of the deceased person and likely use of the weapon therefore and it would then be the prosecutor's duty and obligation to have the corroborative evidence available on record from the other prosecution

witnesses."

36. In Kailash v. State of M.P.13this court while adverting to the question as to the course open to the courts where oral evidence is to be found inconsistent with the medical evidence observed :

13 (2006) 11 SCC 420

"When, however, oral evidence is found to be inconsistent with the medical evidence, the question of relying upon one or the other would depend upon the facts and circumstances of each case. No hard-and-fast rule can be laid down therefor."

Can the medical evidence be altogether ignored ?

37. This court in State of Rajasthan v. Bhanwar Singh14observed : 2004 AIR SCW 5245, Para 6

14 (2004) 13 SCC 147.

"Though ocular evidence has to be given importance over medical evidence, where the medical evidence totally improbabilises the ocular version that can be taken to be a factor to affect credibility of the prosecution version."

38. In our considered opinion, the medical evidence and surrounding circumstances altogether cannot be ignored and kept out of consideration by placing exclusive reliance upon the testimony of person recording a dying declaration.

39. The Dying Declaration must inspire confidence so as to make it safe to act upon. Whether it is safe to act upon a Dying Declaration depends upon not only the testimony of the person recording Dying Declaration - be it even a Magistrate but also all the material available on record and the circumstances including the medical evidence. The evidence and the material available on record must be properly weighed in each case to arrive at proper conclusion.The court must satisfy to itself that the person making the Dying Declaration was conscious and fit to make statement for which purposes not only the evidence of persons recording dying declaration but also cumulative effect of the other evidence including the medical evidence and the circumstances must be taken into consideration.

CONCLUSION :

40. It is unsafe to record conviction on the basis of a dying declaration alone in cases where suspicion is raised as regards the correctness of the dying declaration. In such cases, the court may have to look for some corroborative evidence by treating dying declaration only as a piece of evidence.

41. In the present case it is difficult to rest the conviction solely based on the dying declarations. The deceased sustained as many as 63 injuries. Having regard to the nature of injuries the deceased may not have been in a position to make any statement before P.W. or before P.W.7. P.W.7- the Inspector admitted that the condition of the deceased even at 5.30 p.m. was very precarious. P.W.10 Professor and Doctor of Forensic Medicine admitted injuries 1 to 13 and 19 could have resulted in the deceased going into coma.

42. We are not satisfied that the prosecution has proved its case against the appellant beyond reasonable doubt. Appellant is entitled to the benefit of doubt. We, therefore, allow this appeal and acquit the appellant of the charges levelled against him. The appellant is, therefore, directed to be released forthwith provided he is not required in connection with any other case or cases.

Appeal allowed.