SUPREME COURT OF INDIA

Vikas

Vs.

State of Maharashtra

C.A.No.321 of 2006

(C.K. Thakker and Markandey Katju,JJ.)

21.01.2008

JUDGMENT

C.K. Thakker, J.

1. The present appeal is filed by the appellants-accused against judgment and order passed by the High Court of Judicature at Bombay (Aurangabad Bench) on December 20, 2005 in Criminal Appeal No. 321 of 2005 convicting them for offences punishable under Sections 302 and 342 read with Section 34 of the Indian Penal Code (IPC). The High Court, by the impugned judgment, partly confirmed the order passed by the Third Ad-hoc Additional Sessions Judge, Ahmednagar on April 16, 2005 in Sessions Case No. 92 of 2001.

2. The case of the prosecution was that deceased Rekha was given in marriage by PW 1 Laxmn Pingale to accused No. 1 Vikas Vayse. Accused No. 2 was brother of Vikas and brother-in-law of deceased Rekha. The marriage was solemnized in or about 1997-98 before 3 to 4 years of the incident in question. According to the prosecution, the accused demanded dowry and there was some dispute even at the time of betrothal ceremony which was locally known as Sakharpuda. After the marriage, Rekha went to her matrimonial home at Khandvi. For few months, the marriage relations went on well. Thereafter, however, all the accused started demanding money towards dowry. They used to harass and beat Rekha. Rekha could not satisfy the demand of the accused due to poverty of her parents. She complained to her parents about ill-treatment shown by the accused whenever she had visited to parental home. Though accused No. 2 Prakash was serving at Pune, frequently he was coming to Khandvi and staying with other accused. He used to abuse deceased Rekha and instigate accused persons to give ill-treatment to Rekha. Meanwhile accused came to know that father of Rekha had sold his land for Rs. one lakh. They, therefore, repeated demand of dowry and continued giving more trouble to her. Rekha also gave birth to two children; (i) Varsha-daughter, and (ii) Yogesh-son.

3. On the fateful day, i.e. on May 16, 2001, at about 11.00 a.m., accused No.1, husband of Rekha started quarrelling with the deceased. Accused Nos. 3 and 4, parents of accused No. 1 also participated in the quarrel. All of them, according to the prosecution, poured kerosene on the person of Rekha; accused Vikas ignited match-stick and set Rekha on fire. All the accused then closed the door from outside and ran away. Rekha cried for help. On hearing the shouts, neighbours reached the place, opened the door, poured water on her, extinguished the fire and took her to the hospital. Dying declarations were recorded by Ramchandra Ganpat Dimale, Special Judicial Magistrate as also by PSI Bapu Yashwant Kale on May 17 and 18, 2001 respectively. Rekha died on June 1, 2001. After registration of offence being Crime No. 80 of 2001, investigation was carried out by PSI Kale. On completion of Court of Judicial Magistrate, First Class, Karjat and the case was committed to the Court of Session.

4. Defense of the accused was of total denial. According to them, there was no ill-treatment towards Rekha. Regarding fire, it was the case of the accused that on the day of incident, sari of Rekha caught fire by accident while she was working near a fire place and it was accused No. 1 who extinguished fire. She was taken in a tractor and then in a jeep to Civil Hospital, Ahmednagar. But a false case was filed against them at the instigation of Smt. Bondre, maternal aunt of Rekha.

5. In order to establish offence against the accused, prosecution examined seven witnesses. So far as PW 1 Laxman Pingale, father of the victim is concerned, he did not support the case of the prosecution and was declared hostile. Similarly, Manohar Sahebrao Vayse, PW 2, Panch witness to the Spot Panchnama (Ex. 47) also did not support the case and he was also declared hostile. The prosecution, in the circumstances, mainly relied upon two witnesses, PW 5 Ramchandra Ganpat Dimale, Special Judicial Magistrate who recorded dying declaration of deceased Rekha between 11:30 and 11:52 a.m. on May 17, 2001, i.e. next day of the incident and P.W. 7, Bapu Yashwant Kale, PSI who also recorded dying declaration between 12:30 to 13:00 hrs. on May 18, 2001.

6. The trial Court after considering the evidence on record, held that from the prosecution evidence and particularly from two dying declarations said to have been recorded by PW 5 Ramchandra, Special Judicial Magistrate, and PW 7, PSI Kale, it was clearly established by prosecution beyond reasonable doubt that accused Nos. 1, 3 and 4 caused death of deceased Rekha. So far as Accused No. 2 is concerned, the trial Court acquitted him presumably on the ground that he was not present at the time of incident and was also not staying at village Khandvi. He was serving at Pune. The remaining three accused were held responsible for demand of dowry and for killing deceased Rekha and thereafter closing the door from outside so that she may not be able to come out and save herself. All the three accused thus were convicted for offences punishable under Sections 498A, 302 and 342 read with Section 34, IPC. For an offence punishable under Section 302 read with Section 34, the accused were ordered to suffer imprisonment for life and pay a fine of Rs. 5,000/- each. In default of payment of fine, they were ordered to suffer further rigorous imprisonment for six months each. For an offence punishable under Section 498A read with Section 34, IPC, they were ordered to undergo rigorous imprisonment for one year and to pay fine of Rs.500/- each, in

default to payment of fine, to undergo imprisonment for six months and for offence under Section 342 read with Section 34, they were ordered to undergo imprisonment for six months.

7. Being aggrieved by the order of conviction and sentence, the appellants preferred an appeal in the High Court. The High Court again appreciated the evidence and by a well-reasoned judgment, came to the conclusion that though PW 1 Laxman Pingale, father of the deceased and PW 2 Panch Manohar Vayse did not support the case of the prosecution, from two dying declarations, it was clearly established that the accused had committed offences punishable under Section 302 and 342 read with Section 34, IPC. Accordingly, order of conviction and sentence recorded by the trial Court was held proper and the said order was confirmed by the High Court. As to an offence punishable under Section 498A read with Section 34, IPC, however, the High Court held that since it was not the case of the prosecution that Rekha was driven to death by committing suicide due to demand of dowry, it could not be said that the offence was established. All the accused persons were, therefore, acquitted of offence punishable under Section 498A read with Section 34, IPC. The above decision is challenged in the present appeal.

8. Leave was granted on March 10, 2007, but the prayer for bail was rejected. The matter was then ordered to be placed for final hearing and that is how the matter is before us.

9. We have heard the learned counsel for the parties.

10. The learned counsel for the appellant strenuously urged that both the courts committed an error of fact and of law in convicting the appellants for offences punishable under Sections 302 and 342 read with Section 34, IPC. It was submitted that the genesis of the prosecution story became doubtful when PW 1 Laxman did not support the case. Similarly, from the evidence of PW 2 Manohar, it was not established that the appellants were responsible for death of Rekha. On the contrary, from the evidence of two witnesses, it was clear that accused No. 1 Vikas attempted to save Rekha and he also sustained burn injuries. It was further submitted that in all there were four dying declarations. Two dying declarations were initial in point of time and they were oral. The first dying declaration was before PW 1 Laxman, father of the deceased by the deceased wherein she stated that fire was accidental and accused were not responsible for burn injuries sustained by her. This was clearly proved from the evidence of PW 1 Laxman. The second dying declaration was also oral and it was made before PW 2 Manohar, Panch witness. In that dying declaration also, she stated that nobody was responsible for the incident and the fire was accidental. Both the courts were wrong in not giving due importance to oral dying declarations and in heavily relying upon dying declarations of May 17, 2001 before PW 5 Ramchandra, Special Judicial Magistrate and of May 18, 2001 before PW 7 PSI Kale. On all these grounds, it was submitted that the appellants are entitled to benefit of doubt and the orders passed by both the courts deserve to be set aside.

11. The learned counsel for the State, on the other hand, supported the order of conviction and sentence. He submitted that both the courts considered the evidence of PW 1, Laxman and PW 2 Manohar and recorded a specific finding that for some undisclosed reasons, they did not support the case of the prosecution and supported the defense. But there was no reason for PW 5 Ramchandra, Special Judicial Magistrate who recorded dying declaration of deceased Rekha on May 17, 2001 to falsely implicate the accused and he was rightly relied upon and believed by both the courts. Similarly, there was no reason for PW 7 PSI Kale who also recorded the dying declaration of the deceased Rekha on May 18, 2001 to involve the accused. Deceased caught fire on May 16, 2001 and she died after about 15 days on June 1, 2001. If, in the light of these circumstances, both the courts recorded a finding of guilt against accused, it cannot be said that the orders deserve interference by this Court. Moreover, the trial court acquitted Accused No.2 Prakash by giving benefit of doubt. Again, the High Court extended benefit of doubt to the remaining accused (appellants) so far as offence punishable under Section 498A read with Section 34, IPC is concerned. But from the evidence on record and on the basis of surrounding circumstances, offences punishable under Sections 302 and 342 read with Section 34, IPC were clearly established and the appeal deserves to be dismissed.

12. Having heard the learned counsel for the parties, in our considered opinion, both the courts were right in convicting the appellants for offences punishable under Sections 302 and 342 read with Section 34, IPC. It is no doubt true that PW 1, Laxman Pingale, father of deceased Rekha did not support the prosecution. But it is equally true and the High Court has considered the evidence of the said witness in detail and has come to the conclusion that for some unknown reasons, he wanted to oblige the accused. The High Court also noted that from the intrinsic evidence on record, it was proved that he was a liar. For coming to that finding, the High Court relied upon several circumstances, such as, it observed that though it was the case of the Investigating Officer, PW 7 PSI Kale that statement of PW 1 Laxman was recorded and a supplementary statement was also recorded, PW 1 Laxman had audacity to depose before the Court on oath that his statement was never recorded by the police. The High Court, in our opinion, is right in observing that in such cases, police would normally record statements of all persons who are near relatives of the deceased. Father of the deceased was one such person and police would not fail to record his statement. Again, PW 1, Laxman had stated on oath that it was accused No. 1 who brought injured Rekha to the hospital. That was clearly false and it was proved from documentary evidence of the hospital. According to the prosecution, all the appellants poured kerosene on Rekha, set her on fire, closed the door from outside and ran away from the spot. Having heard the cries of Rekha, neighbours reached at the place, opened the house of the accused and took her to the hospital. This is also clearly proved from the entry which is found in the hospital register from which it was proved that it was not accused NO. 1 who brought the injured to the hospital. Ex.41, which is an intimation received by Topkhana Police Station on telephone from Civil Hospital, Ahmednagar, dated June 01, 2001 reads as under; Rekha As she was injured due to burns; she was admitted by Bebi Shantilal Vaise on 16.05.2001 at 15/00 hrs. For treatment and white she was under treatment she expired on 01.06.2001 at 05.45 hrs. I.e.

Rekha, who was admitted as a burn patient by Baby Shantilal Vayse on 16.05.2001 15.00 hours for treatment, has expired on 01.06.2001 at 5:45 hours.

13. The High Court, in the circumstances, stated;

> "It can be seen that these two statements, which have come in the chief examination at the cost of prosecution, are improvements over and above the Police statement. The falsehood of the father is obvious when he denies that his statement was recorded by Police. When it is unnatural death by burning, Police are bound to record the statement of every possible person, who can throw some light upon the relationship of victim with her husband and in-laws and the enquiry is bound to continue till the Police can reach a logical conclusion as to the nature of death i.e. whether accidental, suicidal or homicidal. The father, when he denies that Police have recorded his statement, it ought to be read in between the lines that he is telling patent lies. Father of the victim would be the closest person and Police would not be in a position to close the investigation without recording the statement of father of the victim. It is difficult to swallow this version of the father that although dead body was handed over to him after post mortem, Police have not recorded his statement. These are the days when we are required to attend to writ petitions even on the criminal side filed by aggrieved complainant or relatives of victim when Police show laxity or keep any lacunae in their investigation. The deposition of the father that he did not give any statement to the Police can, therefore, be seen to be a patent lie."

14. The Court proceeded to state;

> "In spite of this hostility, the father has admitted that Executing Magistrate removed him outside room where Rekha was admitted when he recorded statement of deceased Rekha. Thus, further deposition confirms recording of the statement of Rekha by the Magistrate. During the cross examination by defense, father claims that he reached Civil Hospital, Ahmednagar, on 16.05.2001 after telephonic message of Rekha having suffered burn injuries. Here he repeated the exonerating dying declaration by saying It is true that she was also telling Police that her one end of saree fell on fire and she was burnt. Accused Vikas told me that he poured water from the mud pot to extinguish the fire of Rekha."

15. Thereafter, he switched over to correct himself that this was told by Rekha and not by Vikas. This concluding part of the cross examination clearly indicates that father is making exonerating statements in a calculated manner. This is evident from the next statement after this correction. The father says:

> "When I was talking with Rekha, accused Vikas went to bring medicine. Accused brought Rekha in the Civil Hospital, Ahmednagar."

16. Probably, father felt necessity of absence of Vikas to be of importance when he learnt about accused Vikas having tried to extinguish the victim and, therefore, he corrected himself by saying that he learnt about the action of accused trying to extinguish Rekha, from Rekha, and for the purpose, he also claimed that Vikas had gone to fetch medicines.

17. The High Court, therefore, rightly concluded;

> "We must say that for the reasons unknown to this Court, father is a witness having scant respect for the truth and we are, therefore, not inclined to accept any of his admissions favorable to defense, either to challenge the inculcator material or to dilute the effect of the same."

18. The High Court also dealt with the evidence of PW 2 Manohar, Panch witness and observed that for some reason, he wanted to oblige the accused. He stated that the accused brought Rekha to the hospital, which was obviously incorrect since as per the hospital record, she was taken to the hospital by Baby Scintilla.

19. The Court, however, in our opinion, rightly observed that the prosecution had to stand on its own legs and the case against the accused could not be said to be established because of weakness or infirmity in defense version. But in our view, the Court was right in relying upon evidence of PW 5, Ramchandra, and Special Judicial Magistrate and in the dying declaration of deceased Rekha. According to the Court, PW 5 was a retired Gazette Officer of Armed Forces aged about 76 years. He stated on oath that on May 17, 2001, he received requisition from police at about 11.00 a.m. (Ex.55) requesting him to record a dying declaration. He obtained the details of the victim from the police, took them down on a piece of paper upon which he proposed to record dying declaration and proceeded to Out Patient Department (OPD). He contacted the Medical Officer on duty, requested him to accompany to examine the patient and give his opinion whether she was in a position to make statement. The doctor certified that the patient was conscious and fit to give statement. The doctor expressed that opinion after putting certain questions to the patient and certified that she was in a position to give a statement. PW5 thereafter recorded the dying declaration of Rekha at 11-25 a.m. which was read over to her. She admitted it to be correct and put her thumb impression on it. The recording of dying declaration was over at 11.52 a.m. The witness put his signature as Special Judicial Magistrate in margin along with the seal. According to PW 5 Ramchandra, the doctor was present by his side all throughout when he was recording the statement of Rekha. After the statement was recorded, the Doctor again certified the fitness of the patient and put his signature, date and time. The said dying declaration was exhibited as Ex. 56.

20. It was strenuously urged by the learned counsel for the appellants before the High Court as well as before us that after the dying declaration was recorded, an endorsement was made by the Doctor and he put his signature by putting time as 11.55 p.m. It was, therefore, contended that either the dying declaration was not recorded by PW 5 Ramchandra, Special Judicial Magistrate between 11.30 to 11.52 a.m. as asserted by him or the Doctor was not

there when the dying declaration was recorded and his endorsement was not taken at 11.55 a.m., but it was subsequently placed before him for his signature at 11.55 p.m. In our opinion, however, the High Court was right in relying upon substantive evidence of PW 5 Ramchandra and in relying upon the dying declaration observing that the typist in putting the time at 11.55 p.m., had committed mistake, really it was 11.55 a.m.

21. The High Court was also right in relying upon another dying declaration recorded by PW 7 PSI Kale.During the course of investigation, the Investigating Officer on May 18, 2001, between 12.30 to 13.00 hrs. Recorded the dying declaration of Rekha after taking opinion of the doctor that she was in a position and in a fit condition to give statement. In both the dying declarations, i.e. dying declaration recorded by PW 5 Ramchandra, Special Judicial Magistrate and dying declaration recorded by PW 7 PSI Kale, Rekha clearly and unequivocally attributed burn injuries caused to her to the appellants herein. Both the courts, relying on the dying declarations, convicted the appellants. So far as oral dying declarations are concerned, as observed by us, the High Court was right in discarding them observing that PW 1 and PW 2 were favoring the defense and deliberately did not support the case of the prosecution in Court.

22. The question thus is confined to evidentiary value of dying declarations of Rekha. Section 32 of the Evidence Act, 1872 (hereinafter referred to as the Act) deals with statement by persons who cannot be called as witnesses either because they are dead, or they cannot be found, or they have become incapable of giving evidence, or their attendance cannot be procured without an amount of delay or expense. Those statements themselves are relevant facts in certain cases. Section 32 is an exception to the general rule reflected in Section 60 of the Act which enacts that oral evidence in all cases must be direct, viz., if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it; if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it; if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner.

23. Section 32 contains several clauses. Clause (1) relates to cause of death and is usually known as dying declaration. The said clause reads thus; when it relates to cause of death.(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that persons death comes into question.

24. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

25. Illustration

> “(a) The question is, whether A was murdered by B; or a dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was

> ravished by B; or The question is whether A was killed by B under such circumstances that a suit would lie against B by As widow. Statements made by A as to the cause of his or her death referring respectively to the murder, the rape and the actionable wrong under consideration are relevant facts."

26. The principle underlying admissibility of dying declaration is reflected in the well-known legal maxim: Memo meritorious praesumiturmentire; i.e. a man will not meet his Maker with a lie in his mouth. A dying man is face to face with his Maker without any motive for telling a lie.

> "Truth said Mathew Arnold, sits upon the lips of a dying man"

27. Shakespeare, great writer of the sixteenth century, through one of his characters explained the basic philosophy thus;

> "Have I met hideous death within my view, retaining but a quantity of life, which bleeds away, Even as a form of wax, Resolved from his figure, Against the Fire? What is the world should make me now deceive, since I must lose the use of all deceit? Why should I then be false, since it is true that I must die here, Live hence by truths?(King John, Act V, Sect. IV) The Great poet also said at another place;"

> "Where words are scarce, They are seldom spent in vain; They breathe the truth, That breathe their words in pain.(Richard II)"

28. Clause (1) of Section 32 of the Act has been enacted by the Legislature advisedly as a matter of necessity as an exception to the general rule that hearsay evidence is no evidence and the evidence which cannot be tested by cross-examination of a witness is not admissible in a Court of Law. But the purpose of cross-examination is to test the veracity of the statement made by a witness. The requirement of administering oath and cross-examination of a maker of a statement can be dispensed with considering the situation in which such statement is made, namely, at a time when the person making the statement is almost dying. A man on the death-bed will not tell lies. It has been said that when a person is facing imminent death, when even a shadow of continuing in this world is practically over, every motive of falsehood is vanished. The mind is changed by most powerful ethical and moral considerations to speak truth and truth only. Great solemnity and sanctity, therefore, is attached to the words of a dying man. A person on the verge of permanent departure from his earthly world is not likely to indulge into falsehood or to concoct a case against an innocent person, because he is answerable to his Maker for his act. Moreover, if the dying-declaration is excluded from admissibility of evidence, it may result in miscarriage of justice inasmuch as in a given case, the victim may be the only eye-witness of a serious crime. Exclusion of his statement will leave the Court with no evidence whatsoever and a culprit may go unpunished causing miscarriage of justice.

29. The question as to admissibility of dying declaration came up for consideration before Indian as well as foreign courts.

30. Before more than two centuries, in *R.V. Woodcock*[1] C.V. proclaimed;

> "The general principle on which this species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death, and when every hope of this world is gone, when every motive to falsehood is silenced and the mind induced by the most powerful consideration to speak the truth; situation so solemn and so awful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a Court of Justice".

31. *Khushal Rao v. State of Bombay*[2] was probably the first leading case decided by this Court on admissibility of dying declaration. In that case, the accused was convicted by the Court relying on three dying declarations recorded by the attending Doctor, Sub-Inspector of Police and First Class Magistrate. It was contended before this Court on behalf of the accused relying on conflicting views expressed by various High Courts that no conviction can be recorded solely on the basis of dying declaration. Reference was made to an earlier decision of this Court in *Ram Nath Madhoprasad v. State of Madhya Pradesh*[3] in which the following observations were made by this Court; "It is settled law that it is not safe to convict an accused person merely on the evidence furnished by a dying declaration without further corroboration because such a statement is not made on oath and is not subject to cross-examination and because the maker of it might be mentally and physically in a state of confusion and might well be drawing his imagination while he was making the declaration.

32. In Khushal Rao, this Court stated;

> "We have, therefore, to examine the legal position whether it is settled law that a dying declaration by itself can, in no circumstances, be the basis of a conviction".

33. The Court then observed that in Ram Nath, considering factual situation and other evidence on record, this Court ruled that the dying declaration was not true and could not be solely relied upon to base the conviction.

34. The Court then said;

> "It is, thus, clear that the observations quoted above, of this Court, are in the nature of obiter dicta. But as it was insisted that those observations were binding upon the courts in India and upon us, we have to examine them with the care and caution they rightly deserve.

35. Considering Clause (1) of Section 32 of the Act, this Court held that the provision has been made by the Legislature advisedly as a matter of sheer necessity by way of an exception

to the general rule that hearsay is no evidence and that evidence which has not been tested by cross examination is not admissible. But it observed that when a person making the statement is in danger of losing his life, at such serious and solemn moment, he will not tell lies. Since he cannot be cross-examined, necessity of administering oath has been dispensed with. The Legislature, in the circumstances, has accorded a special sanctity which should, on first principles, be respected unless there are clear circumstances brought out in the evidence to show that the person making the statement was not in expectation of death. It was further observed that the said circumstance would not affect the admissibility of the statement but only its weight.

36. Considering the views expressed by different High Courts and also leading commentaries, the Court summarized the principles thus:

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

37. In *Smt. Paniben v. State of Gujarat*[4] this Court again considered the law relating to dying declaration and as to when such declaration can form sole basis of conviction. Referring to earlier cases, the Court held that a dying declaration is entitled to great weight. Once the Court is satisfied that the declaration is true and voluntary, it could base conviction without 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 and not a rule of law.

38. The Court, referring to earlier case law, summed up principles governing dying declaration as under:

> "(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.
>
> (ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.
>
> (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 had opportunity to observe and identify the assailants and was in a fit state to make the declaration.
>
> (iv)Where dying declaration is suspicious it should not be acted upon without corroborative evidence.
>
> (v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected.
>
> (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction.
>
> (vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected.
>
> (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.
>
> (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.

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.”

39. One of the principles formulated by this Court in Khushal Rao was that where a dying declaration is recorded by a competent Magistrate, it would stand on a much higher footing. We are in respectful agreement with the above view. In our judgment, this is also based on ordinary course of human conduct. A competent Magistrate has no axe to grind against the person named in the dying declaration of the victim and in absence of circumstances showing anything to the contrary, he should not be disbelieved by the Court.

40. In *Ravi Chander & Ors. v. State of Punjab*[5] accused were prosecuted for offences punishable under Sections 498A, 302, 304B read with Section 34, IPC. Dying declaration of the bride was recorded. Veracity of the said declaration was questioned by the accused. Placing reliance mainly on the dying declaration recorded by the Executive Magistrate, the trial Court convicted the accused and the High Court confirmed the conviction. The aggrieved accused approached this Court.

41. The Court noted that though the dying declaration recorded by the Executive Magistrate was sent to the Investigating Officer after a fortnight, the genuineness of the dying declaration could not be doubted. It was observed that in the first dying declaration said to have been recorded by the Investigating Officer, death was shown to be accidental. But it was held that the second dying declaration before the Executive Magistrate was reliable. It was further observed that in absence of any circumstance or material on record to establish that the Executive Magistrate had any animus against the person or in any way interested in fabricating the dying declaration, it ought to be accepted. The conviction was accordingly upheld.

42. *Harjit Kaur v. State of Punjab*[6] was another case of bride burning. There dying declaration was recorded by Sub-Divisional Magistrate, the genuineness of which was challenged inter alia on the ground that there was an agitation by the relatives of the deceased and the declaration was recorded by the Sub-Divisional Magistrate under pressure. The Court, however, held that Sub-Divisional Magistrate being independent witness holding high position had no reason to do anything which was not proper. It was therefore, held that genuineness of dying declaration could not be doubted and conviction recorded on that basis could not be faulted.

43. In *Koli Chunilal Savji & Anr. v. State of Gujarat*[7] there was no specific endorsement of doctor as to mental fitness of the deceased to make the dying declaration. However, it had come in evidence that the deceased was certified to be in a position to make dying declaration and accordingly, the dying declaration was recorded. This Court held that requirement as to doctors endorsement as to mental fitness of the deceased was only a rule of prudence and the ultimate test was whether the dying declaration was truthful and voluntary. The Magistrate who recorded the dying declaration was examined as a witness and he categorically deposed that at the hospital, on being asked, the doctor told her that the deceased was conscious and in

a fit mental condition. It was held that it was sufficient to come to the conclusion that dying declaration was proper and could be relied upon.

44. In *Uka Ram v. State of Rajasthan*[8] it was indicated that the Court must be satisfied about the trustworthiness and voluntary nature of the dying declaration and fitness of the mind of the deceased. If despite knowing that deceased was a mental patient, Investing Agency fails to take precaution to ensure that whether the death was suicidal or homicidal, conviction cannot be based solely on dying declaration of the deceased.

45. In *P.V. Radhakrishna v. State of Karnataka*[9] this Court considered doctrine of dying declaration indicated in legal maxim nemo moriturus praesumitur mentire (a man will not meet his Maker with a lie in his mouth), and stated;

> "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, or 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 assailant. 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.[*see also Babu Lal v. State of M.P*[10] *Muthu Kutty v. State*[11]

46. Applying the above principles to the facts of the case, in our judgment, both the courts were wholly right and fully justified in relying upon two dying declarations recorded by (i) PW 5 Ramchandra, Special Judicial Magistrate on May 17, 2001 (Ex. 56) and (ii) PW 7 PSI Kale on May 18, 2001 (Ex. 62) and in discarding evidence of PW 1 Laxman, father of victim Rekha and PW2 Manohar, Panch. The Courts were also right in observing that for some unknown reasons PW 1 Laxman, father of victim Rekha was supporting the defence. But in the light of other evidence on record oral as well as documentary PW 1 Laxman could not be said to be trustworthy and reliable witness. At the time of investigation, his case was that the accused were responsible for causing death of her daughter Rekha, but subsequently he took totally opposite stand and supported the defense. The prosecution, however, was successful in bringing before the Court PW 5 Ramchandra, Special Judicial Magistrate and PW 7 PSI Kale who recorded dying declarations of deceased Rekha. Both the witnesses were rightly believed by the courts below. We, therefore, see no ground to interfere with the order of conviction and sentence recorded by the trial Court and confirmed by the High Court. The appeal, therefore, deserves to be dismissed.

47. For the foregoing reasons, the appeal is dismissed. Order of conviction and sentence recorded against the appellants is upheld.

Cases Referred

[1] *(1789) 1 Leach 500 168 ER 352 Eyre*
[2] *1958 SCR 552*
[3] *AIR 1953 SC 420*
[4] *(1992) 2 SCC 474*
[5] *(1998) 9 SCC 303 JT 1998 8 SC 211*
[6] *(1999) 6 SCC 545 JT 1999 5 SC 317*
[7] *(1999) 9 SCC 562 JT 1999 7 SC 568*
[8] *(2001) 5 SCC 254 JT 2001 4 SC 472*
[9] *(2003) 6 SCC 443 JT 2003 6 SC 84*
[10] *(2003) 12 SCC 490*
[11] *(2005) 9 SCC 113*