SUPREME COURT OF INDIA

Bijoy Das

Vs.

State of West Bengal

Crl.No.188 of 2008

(Arijit Pasayat and P. Sathsivam JJ.)

28.01.2008

JUDGMENT

Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of Calcutta High Court, upholding the conviction and sentence of the appellant who was found guilty of offence punishable under Sections 302 of the Indian Penal Code, 1860 (in short IPC) and was sentenced to undergo imprisonment for life.

3. Prosecution case in a nutshell is as follows:

> "On 28.9.1993, between 6.45 p.m. and 7.00 p.m. Sisir Kr. Das @ Ajoy (hereinafter referred to as the deceased) was shot by the present appellant in front of his house at College Para and immediately thereafter Ajoy was shifted to hospital where after ten days he succumbed to his injuries. One Satya Ranjan Das (PW 1), cousin brother of Ajoy, getting information from one local boy about the occurrence, came to learn from injured Ajoy at hospital that he was shot at by his step uncle Bijoy Das. The appellant immediately thereafter lodged the written complaint at Raijung P.S. On the basis of the written complaint of Satya Ranjan Das which was received by the local P.S. at about 19.50 hours of 28.9.1993 S.I. S. Pradhan of Raijung P.S. took up the investigation and in course of investigation, he visited the place of occurrence, made seizure in respect of a bicycle used by the victim Ajoy, visited hospital and recorded statement of Ajoy and other witnesses of the occurrence, collected declaration given by Ajoy to the attending doctor and S.I. Pradhan also collected the post mortem report and finally, submitted charge sheet against the present appellant both under Section 302 IPC as well as under Section 25/27 of the Arms Act, 1959 (in short Arms Act). The learned Sessions Judge after framing charge under Section 302 IPC as well as

under Section 25/27 of the Arms Act explained the same to the appellant and the appellant pleaded not guilty to both the charges and claimed for trial.

Prosecution, during trial examined 16 witnesses including PW.1 the FIR maker, PW.4 wife of the deceased who was an eyewitness of the occurrence and PW.6, PW.8 and PW.9. who came to learn from deceased Ajoy that he was shot at by the appellant. Prosecution also examined PW.14 doctor Jiban KrishanaBhaduri who conducted operation of Ajoy and who also recorded a declaration of Ajoy disclosing the name ofthe appellant as his assailant, PW.15 Dr. Rash Behari Ghosh, conducted post-mortem examination and PW.16 was the investigating officer. Apart from oral evidence, prosecution also produced before the Trial Court the written complaint of PW.1, bed head ticket of Ajoy Das consisting declaration of Ajoy recorded by PW.14, post-mortem report and several seizure lists. The learned Trial Court, on perusal of prosecution evidence both oral and documentary and after considering submissions of both the sides, found the present appellant guilty of the offence under Section 302 IPC and he was convicted accordingly. However, the Trial Court did not find any material to hold the appellant guilty for the offence under Section 25/27 of the Arms Act."

4. The Trial Court placed reliance on the evidence of PW4 the wife of the victim and also relied on the evidence of PWs 6, 8 and 9 along with PW1. It is to be noted that the deceased during his treatment in the hospital had categorically stated that the appellant has assaulted him. The Trial Court did not find any substance in the plea that at the behest of PW1 the false case has been foisted.

5. In appeal the High Court, as noted above, dismissed the appeal.

6. In support of the appeal learned counsel for the appellant submitted that the evidence of PW4 clearly lacks credence. The alleged statement before PWs 6, 8, 9 and 14 cannot be treated as a dying declaration. Learned counsel of the respondent-State on the other hand supported the judgment

7. We see no reason to doubt the veracity of the dying declarations especially since there is consistency between them. We see no reason why the doctor or the other witnesses should make a false statement about the dying declaration. There is no allegation of enmity between the accused and these persons. As observed by this *Court in Narain Singh v. State of Haryana*[1].A dying declaration made by a person on the verge of his death has a special sanctity as at that solemn moment a person is most unlikely to make any untrue statement. The shadow of impending death is by itself guarantee of the truth of the statement of the deceased regarding the circumstances leading to his death. But at the same time the dying declaration like any other evidence has to be tested on the touchstone of credibility to be acceptable. It is more so, as the accused does not get an opportunity of questioning veracity of the statement by cross-examination. The dying declaration if found reliable can form the base of conviction.

8. In *Babulal v. State of M.P.*[2] this Court observed vide in para 7 of the said decision as under: (SCC p. 49. A person who is facing imminent death, with even a shadow of continuing in this world practically non-existent, every motive of falsehood is obliterated. The mind gets altered by most powerful ethical reasons to speak only the truth. Great solemnity and sanctity is attached to the words of a dying person 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. The maxim is a man will not meet his Maker with a lie in his mouth (nemo meritorious praesumitur mentiri). Mathew Arnold said, truth sits on the lips of a dying man. The general principle on which the 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 mind induced by the most powerful consideration to speak the truth; situation so solemn that law considers the same as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice.

9. In *Ravi v. State of T.N*[3] this Court observed that: (SCC p. 777, para 3) If the truthfulness of the dying declaration cannot be doubted, the same alone can form the basis of conviction of an accused and the same does not require any corroboration, whatsoever, in law.

10. In *Muthu Kutty v. State*[4] vide para 15 this Court observed as under:

> "(SCC pp. 120-21) 15. 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 the 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. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in *Paniben v. State of Gujarat*[5] (SCC pp. 480-81, paras 18-19) (emphasis supplied)."
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> "(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See *Munnu Raja v. State of M.P* [6].

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See *State of U.P. v. Ram Sagar Yadav and Ramawati Devi v. State of Bihar*[7] .

(iii) The 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 an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (*See K. Ramachandra Reddy v. Public Prosecutor*[8]

(iv)Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (*See Rasheed Beg v. State of M.P.* [9]

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (*See Kake Singh v. State of M.P.*[10]

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (*See Ram Manorath v. State of U.P*[11]

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (*See State of Maharashtra v. Krishnamurti Laxmipati Naidu*[12].

(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. (*See Surajdeo Ojha v. State of Bihar*[13]

(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 eyewitness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (*See Nanhau Ram v. State of M.P.*[14]

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (*See State of U.P. v. Madan Mohan*[15].

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. (*See Mohanlal Gangaram Gehani v. State of Maharashtra*[16]"

11. A perusal of the various decisions of this Court, some of which have been referred to above, shows that if a dying declaration is found to be reliable then there is no need for corroboration by any witness, and conviction can be sustained on its basis alone.

12. The evidence of PWs. 6, 8 and 9 clearly shows that the deceased immediately prior to his death had disclosed to PWs. 6, 8 and 9 that he had suffered injuries at the hands of the appellant. Additionally, in the bed-head ticket which was exhibited, PW-14 categorically noted the statement of the deceased that he had been assaulted by the accused. The evidence of PW4 was to the effect that she was waiting for her husband standing in front of their house. She stated that the deceased was coming by a bicycle. She also could note that the appellant as following the deceased and fired shot at the deceased. When the evidence of PWs 4, 6, 8, and 9 is analyzed, the inevitable conclusion, as was rightly observed by the Trial Court and the High Court, is that the appellant had fired the shot which resulted in the death of the deceased.

13. That being so, there is no merit in this appeal and the same is dismissed.

Cases Referred

[1] *AIR vide p. 7SCC p.267 p. 7*
[2] *2003 12 SCC 490*
[3] *(2004 10 SCC 776*
[4] *2005 9 SCC 113*
[5] *1992 2 SCC 474*
[6] *1976 3 SCC 104*
[7] *1985 1 SCC 552*
[8] *1976 3 SCC 618*
[9] *1974 4SCC 264*
[10] *1981Supp. SCC 25*
[11] *1981 2 SCC 654*
[12] *(1980 Supp. SCC 455)*
[13] *1980 Supp. SCC 769*
[14] *1988 Supp. SCC 152*
[15] *1989 3 SCC 390*
[16] *1982 1 SCC 700*