**SUPREME COURT OF INDIA**

Kalawati W/o Devaji Dhote

Vs.

State of Maharashtra

Crl.A.No.267 of 2009

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ.)

11.02.2009

**JUDGMENT**

**Dr. Arijit Pasayat, J.**

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Bombay High Court, Nagpur Bench, upholding the conviction of the appellant for offence punishable under Section 302 of the *Indian Penal Code, 1860* (in short `IPC') as was recorded by the learned Sessions Judge, Wardha, and the sentence of life imprisonment was awarded.

3. The prosecution version is as follow: Appellant was prosecuted for the offence punishable under Section 302 IPC on the allegations that on 17th March, 1989, at about 5.00 P.M. at Mouja Shekapur (Mozari) she committed murder by intentionally causing death of Babital, wife of Pandurang Lokhande on account of a preceding quarrel. Deceased Babital was residing in the neighbourhood of appellant at Mouja Shekapur. On the date of incident, her husband P.W.3 Pandurang had gone to the field of one Murlidhar Barade. At about 5.00 P.M. he returned home. He noticed his wife in the burnt condition. The fire was extinguished and she was led on the cot. There was quarrel between the deceased Babital and the appellant at about 4.00 P.M. which was witnessed by son of the deceased Sharad (PW 1).

> "The quarrel was also witnessed by Bhaurao (PW 2) the neighbour. After this quarrel and exchange of ugly abuse, the appellant brought kerosene bottle from her house and poured the same on the deceased. She also lit her by matchstick from matchbox. Thus appellant set the deceased on fire. When she tried to go by the side of shed she also caught fire. Shard (PW 1) poured water on the person of his mother and tried to extinguish the fire. Meanwhile because of ugly unbearable abuses between the deceased and the appellant Bhaurao (PW2) had left the said place. He, however, returned back from his house after hearing shouts of Sharad (PW 1) that his mother was set on fire. He noticed the deceased in flames so he took a gunny bag and put on the person of the deceased and extinguished the fire. Thereafter, the husband of the

deceased Pandurang came there. Thereafter, deceased was taken to the hospital at Wardha. It is alleged that Sharad (PW1) had disclosed to his father Pandurang (PW 3) that there was a quarrel between his wife and the appellant. The deceased was admitted in the hospital. Dr. Divekar (PW 4) was there. He was asked to certify by P.H.C. Prabhakar (PW. 5) as to whether the patient Babital was in fit condition to make statement. He certified that she is in fit condition to make statement. Thereafter, Head Constable Prabhakar Wasankar (PW5) recorded the statement of the deceased Ex. 33 is the same certificate of fitness of the said Baital was also endorsed on the same, which is separately exhibited. The said statement was recorded in presence of panchas. Offence under Section 307 IPC was registered against the appellant bearing Crime No.0/1989. Thereafter, the requisition was sent to the Naib Tahsildar and Executive Magistrate Walaskar (PW8) for recording her dying declaration. He went there and after noticing that there was no Medical Officer available in the hospital, satisfied himself by putting questions to the deceased that she was fit to reply the questions, he recorded her dying declaration. In the said dying declaration she stated that when she was winnowing wheat by sitting in the courtyard, the appellant came there.

There was quarrel, appellant threw kerosene on the person of Babital and set her on fire. It was the appellant who had poured kerosene on her person and set her on fire. Investigation was done by P.S.I. Premdas Sardar. He had gone to the spot of incident and prepared spot Panchnama. He seized the pieces of burnt sarees etc. He had also seized kerosene bottle from the house of the appellant. He has seized some of the articles and clothes from the appellant. He arrested the appellant. It may be stated that the deceased, Babital, had sustained burn injuries to the extent of 85% in the incident and she expired on 18.3.1989. Further inquest panchnama was prepared. Dead body was sent for postmortem. Autopsy was conducted by Dr. Divekar at Medical hospital. After due investigation, charge sheet against the appellant was submitted for the offence under Section 302 IPC, before the court of Judicial Magistrate First Class, Hinganghat, who in turn committed this case to the court of Sessions.

Since the accused person pleaded innocence, trial was held. Nine witnesses were examined to further the prosecution version. Sharad (PW1) is the eye-witness. Bhaurao (PW2) is the neighbour of the deceased and the appellant, who after hearing ugly abuses between the appellant and the deceased went to his house and returned after hearing shouts of Sharad (PW1). Pandurang is the husband of the deceased. The accused to establish the plea of innocence examined two persons. The trial court accepted the evidence of Sharad (PW1) as trustworthy and to have been corroborated by the evidence of Bhaurao (PW2) and other evidence on record for the sake of dying declaration before the police office and the Executive Magistrate. Accordingly, the accused was found guilty. In appeal, it was stated that PW1's evidence could not have been accepted because he was a young boy and PW2's evidence also not believable. It was primarily stated that PW1 did not tell PW3, the father, as to who was the author of the crime.

> The High Court found no substance in the stand. The evidence of the child witness was cogent and credible. It is to be noted that the defence took the plea that the deceased had committed suicide while setting herself on fire because of the allegation of illicit relations with the saintly person."

4. In support of the appeal, learned counsel for the appellant submitted that the evidence of PW1 ought not to be relied upon. Moreover, he was a child witness. The fact that he did not disclose to his father who was the alleged author of the crime shows that the prosecution version was based on after thought. Learned counsel for the respondent, on the other hand, supported the judgment.

5. The reason as to why PW1 did not tell PW3 has been explained by PW3 himself. The said witness stated PW1 did not disclose him as to how deceased caught fire because he himself had no time to ask about it and was busy in making arrangement for taking the injured to the hospital where she subsequently breathed her last.

6. 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 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 *Smt. Paniben v. State of Gujarat*[1]:

> "(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. [See *Munnu Raja & Anr. v. The State of Madhya Pradesh*[2]]
>
> (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 Uttar Pradesh v. Ram Sagar Yadav and Ors.*[3] *and Ramavati Devi v. State of Bihar*[4]]
>
> (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 and Anr. v. The Public Prosecutor*[5]]

(iv) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence. [See *Rasheed Beg v. State of Madhya Pradesh*[6]]

(v) Where the deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected. [See *Kaka Singh v State of M.P.*[7]]

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. [See *Ram Manorath and Ors. v. State of U.P.*[8])

(vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected. [See *State of Maharashtra v. Krishnamurthi Laxmipati Naidu*[9]]

(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 Oza and Ors. v. State of Bihar*[10].]

(ix) Normally 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 eye-witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. [See *Nanahau Ram and Anr. v. State of Madhya Pradesh*[11]].

(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 and Ors.*[12]].

(xi) Where there is 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 declarations could be held to be trustworthy and reliable, it has to be accepted. [See *Mohanlal Gangaram Gehani v.State of Maharashtra*[13] *and Mohan Lal and Ors. v. State of Haryana*[14].]"

7. In view of the credible and cogent evidence of PW1 and the dying declaration, we find no merit in the present appeal which deserves dismissal, which we direct.

[1]*(AIR 1992 SC 1817)* [2]*(1976) 2 SCR 764)* [3]*(AIR 1985 SC 416)* [4]*(AIR 1983 SC 164)*
[5]*(AIR 1976 SC 1994)* [6]*(1974 (4) SCC 264)* [7]*(AIR 1982 SC 1021)* [8]*(1981 (2) SCC 654*
[9]*(AIR 1981 SC 617)* [10]*(AIR 1979 SC 1505)* [11]*(AIR 1988 SC 912)* [12]*(AIR 1989 SC 1519)*
[13]*(AIR 1982 SC 839)* [14]*(2007 (9) SCC 151)*