SUPREME COURT OF INDIA

Jaishree Anant Khandekar

Vs.

State of Maharashtra

Crl.A.No. 1094 of 2006

(S.B. Sinha and Asok Kumar Ganguly JJ)

23.03.2009

JUDGEMENT

GANGULY, J.

1. The tragic incident happened over spilled milk.

2. On 15.12.2000, Aruna, w/o Nagnath- accused No.4, received severe burn injuries in an incident which took place around 2.30 p.m. Aruna, the victim, was staying in her house at Dhangar, Moha, District Parbhani with her three children aged about 6 years, 3 years and 8 months respectively. The appellant's husband was the nephew of Aruna and they were having the relations as cousin mother-in- law and daughter-in-law. Admittedly the relation was far from cordial. Nagnath, husband of Aruna, was serving in SRP and not at the place of occurrence at the time of the alleged incident. The appellant and her husband, who was serving as a teacher, were staying in another part of the same house as a tenant and the house was owned by Aruna.

There was easy access from one house to the other.

The incident is said to have occurred in the kitchen of Aruna. The appellant did not dispute her presence in the place of occurrence.

3. The prosecution allegation as unfolded is that on 15.12.2000, in the afternoon, Aruna kept a pot of milk on an electric hot plate in the kitchen, and at that time electricity supply was not there but

the switch was on. Keeping the pot in that position, Aruna went to the terrace but when she got the smell of burnt milk, she rushed to the kitchen to find that electric supply had resumed and boiling milk had spilled over the pot. Seeing this, Aruna got annoyed and asked the appellant why did she not inform Aruna about resumption of electric current and the spilling of milk. To that question of Aruna, appellant became annoyed and responded in words which were rather offensive.

4. Further allegation is that the appellant did not stop at her harsh reply but entered the kitchen of Aruna, took the kerosene container and poured it on her shoulder and, thereafter, ignited the flame and ran to the terrace and declared that Aruna had received burns from electric current.

5. The victim sustained severe burn injuries which were estimated at 100% and was rushed to the Rural Hospital at Gangakhed and, thereafter, shifted to S.R.T.R Medical College Hospital at Ambajogai. In the course of receiving treatment, she succumbed to her burn injuries on 1.1.2001.

6. She was thus alive for 15 days after the incident. The statement of Aruna which was recorded by API Sk. Abdul Rauf at Rural Hospital, Gangakhed was registered as F.I.R. and on completion of investigation chargesheet was filed.

7. In all seven witnesses were examined by the prosecution and the Court also examined three more witnesses. Several dying declarations were given by the deceased-Aruna.

8. In this matter six persons had to face the trial for charges under Section 498A read with Section 34 of I.P.C.

9. The present appellant was charged for an offence of murder under Section 302 and the other five accused persons were tried for having abetted commission of offence of murder by the appellant.

10. The learned Sessions Judge acquitted all the accused persons of the charges under Section 498-A read with Section 34 I.P.C. The accused Nos. 2 to 6 were also acquitted of the charges under Section 302 read with Section 109 I.P.C.

11. The appellant was held guilty of the offence of murder punishable under Section 302 I.P.C. and sentenced to suffer imprisonment for life and also to pay a fine of Rs. 1000/-, in default, to suffer further simple imprisonment for four months.

12. It is an appeal by the sole appellant.

13. On 15.12.2000, Aruna made five dying declarations at different hours and the prosecution relied on them and it appears that both the Trial Court and the High Court sustained the prosecution case primarily on the basis of those dying declarations. Those declarations are as follows:

(1) Exhibit 48 - Case history recorded by Dr. Sangram (P.W. 2) upon admission at Gangakhed Hospital.

(2) Exhibit 58 - Dying declaration recorded by ASI Sk. Abdul Rauf and treated as FIR.

(3) Exhibit 52 - Dying declaration recorded by Executive Magistrate Shivaji (P.W.3).

(4) Exhibit 87 - Dying declaration recorded by Executive Magistrate Smt. Bilkis at Ambajogai at 7 p.m.

(5) Exhibit 79 - Dying declaration recorded by CW1 Head Constable Lamture at 10:25 p.m. at Ambajogai.

14. The High Court found that though there is some deviation in the narration of facts in these five dying declarations but they are consistent in material particulars in the sense that certain facts are common in all of them. They are that after a brief exchange of hot words, the appellant poured kerosene over the shoulder of Aruna and ignited her. It is also clear that nobody came to help the victim to extinguish the flames and the victim was trying to do that with water. The appellant came to the terrace and declared that the victim has got burnt through electric current.

15. The defence version is that Aruna is hot tempered and did not approve the stay of the appellant in her house even though the appellant and her husband were staying by paying rent. Aruna used to pick up quarrels with the appellant on flimsy pretexts and she was keen to ensure that the appellant does not stay in the house at Gangakhed.

16. Further, defence version is that the appellant tried to extinguish the fire of Aruna and during the process, she suffered burn injuries.

The appellant's stand in her statement under Section 313 of the Cr.P.C., 1973 is that Aruna herself set her on fire and appellant tried to extinguish the flames and in the process sustained certain burn injuries and she has been falsely implicated out of the victim's grudge towards her.

17. It appears that the injuries on the appellant are very insignificant. She sustained only 4-5% burn injuries that too not on her palm but near her elbow.

18. Neither the Trial Court nor the High Court accepted the defence plea and it is also difficult for us to accept the same.

19. We find that the High Court has made a detailed analysis of all the dying declarations which are marked as Exhibit Nos. 48, 52, 58, 79 and 87 and out of these dying declarations, the High Court found that Exhibit Nos. 48, 52, 79 and 87 are not without defects. The High Court found, Exhibit 58, which is treated as F.I.R., had an endorsement to the effect that the patient was fully conscious at the time of making the statement. In it an endorsement was made by the Medical Officer that the dying declaration (Exhibit 58) was read over to Aruna and she had admitted that the same has been correctly recorded.

20. Learned Judges of the High Court found that Exhibit 58 was recorded within 15-20 minutes prior to 3:45 p.m. and on the basis of the same, F.I.R. was registered at 4 p.m.

21. Learned Counsel for the appellant assailed the dying declarations pointing out certain defects in their recording, but the learned Judges of the Trial Court and the High Court rightly did not attach much importance to that inasmuch as they are consistent in material particulars.

Learned Judges of the High Court found that the two dying declarations (Exhibits 58 and 87) are acceptable and reliable. Learned Judges also found that the dying declaration (Exhibit 48), which records the history by the Medical Officer, is also reliable.

22. We also find that the evidence of P.W.4 (Bhaskar) in substantial part corroborates the facts stated in the dying declaration.

Therefore, the statement in dying declaration is not uncorroborated.

23. The law relating to dying declaration is an exception to the hearsay rule.

24. The rationale behind admissibility of a dying declaration was best expressed, not in any judgment, but in one of the soliloquies in Shakespeare's King John, when fatally wounded Melun wails:

`Have I met hideous death within my view, Retaining but a quantity of life, Which bleeds away even as a form of wax, Resolveth from his figure 'gainst the fire? What in 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 and live hence by truth?' (See King John, Act V, Scene iv.)

25. Both Taylor and Wigmore in their treatise on Evidence took refuge to the magic of Shakespeare to illustrate the principles behind admissibility of dying declaration by quoting the above passage.

26. Among the judicial fraternity this has been best expressed, possibly by Lord Chief Justice 502, and which I quote: - "...That such declarations are 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 is induced by the most powerful considerations to speak the truth; a 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 in a court of justice..."

27. The test of admissibility of dying declaration is stricter in English Law than in Indian Law.

28. Sir James Fitzjames Stephen in 1876 brought out a `Digest of the Law of Evidence' and its introduction is of considerable interest even today. The author wrote that English Code of Evidence is modelled on the Indian Evidence Act of 1872.

29. In the words of the author:

"In the autumn of 1872 Lord Coleridge (then Attorney General) employed me to draw a similar code for England. I did so in the course of the winter, and we settled it in frequent consultations. It was ready to be introduced early in the Session of 1873. Lord Coleridge made various attempts to bring it forward, but he could not succeed till the very last day of the Session. He said a few words on the subject on the 5th August, 1873, just before Parliament was prorogued. The Bill was thus never made public, though I believe it was ordered to be printed.

It was drawn on the model of the Indian Evidence Act and contained a complete system of law upon the subject of evidence."

30. In that book, Article 26 sums up the English law relating to dying declaration as under:- "Article 26. Dying Declaration as to Cause of Death A declaration made by the declarant as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, is deemed to be relevant only in trials for the murder or manslaughter of the declarant; and only when the declarant is shown, to the satisfaction of the judge, to have been in actual danger of death, and to have given up all hope of recovery at the time when his declaration was made.

Such a declaration is not irrelevant merely because it was intended to be made as a deposition before a magistrate, but is irregular."

(emphasis supplied)

31. In Section 32(1) of the Indian Evidence Act the underlined portion is not there. Instead Section 32 (1) is worded differently and which is set out:

"32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant - Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured, without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:- (1) when it relates to cause of death - When the statement is made by a person as to the cause of his death, or to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

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."

(emphasis supplied) The Queen, 1982 (1) The All England Law Reports 183 (Privy Council), while hearing an appeal from the Court of Appeal of Jamaica, made a comparison of the English Law and Indian Law by referring to the underlined portions of Section 32(1) of the Indian Evidence Act at page 187 of the report. Sir Owen Woodhouse, speaking for the Privy Council, pointed out the different statutory dispensation in Indian Law prescribing a test of admissibility of dying declaration which is distinct from a common law test in English Law.

33. Apart from an implicit faith in the intrinsic truthfulness of human character at the dying moments of one's life, admissibility of dying declaration is also based on the doctrine of necessity. In many cases victim is the only eye witness to a crime on him/her and in such situations exclusion of the dying declaration, on hearsay principle, would tend to defeat the ends of justice. American Law on dying declaration also proceeds on the twin postulates of certainty of death leading to an intrinsic faith in truthfulness of human character and the necessity principle.

34. On certainty of death, the same strict test of English Law has been applied in American Jurisprudence. The test has been variously expressed as `no hope of recovery', `a settled expectation of death'. The core concept is that the expectation of death must be absolute and not susceptible to doubts and there should be no chance of operation of worldly motives. (See Wigmore on Evidence page 233-234).

Rajasthan, AIR 1999 SC 3062, held that under English Law the credence and the relevance of the dying declaration is admissible only when the person making such statement is in hopeless condition and expecting imminent death. Justice Willes coined it as a "settled hopeless expectation was approved by the Court of Criminal Appeal in R declaration is relevant even if it is made by a person, who may or may not be under expectation of death, at the time of declaration. (See para 18, page 3066). However, the declaration must relate to any of the circumstances of the transaction which resulted in his death.

Maharashtra, AIR 2000 SC 2602, a three-Judge Bench of this Court noted that Indian Law has made a departure from English Law relating to admissibility of dying declaration. This Court has held in para 7 as follows:- "(1) Section 32 is an exception of the rule of hearsay and makes admissible the

statement of a person who dies, whether the death is a homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. In this respect, as indicated above, the Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of Section 32 to avoid injustice."

37. Going by the wider test and considering the facts of this case, we have no hesitation that the dying declarations on which High Court has placed reliance are admissible.

38. Certain cases have been cited at the Bar by the learned counsel for the parties which lay down the same principles and are discussed below.

39. Reliance was placed by the learned counsel for the appellant on the decision of this Court in In that case, this Court held that the husband is entitled to the benefit of doubt in view of the fact that the first dying declaration and the subsequent one substantially vary in essential particulars.

40. In the instant case the factual position is not the same, so the decision in Sanjay (supra) has no application.

41. Reliance was also placed by the learned counsel Haryana, (2007) 9 SCC 151, wherein the Court found that before the dying declaration was recorded, the relatives of the deceased including father and mother of the deceased were present with her and were subsequently asked to leave the room. In the facts of that case, learned Judges opined that the dying declaration was clearly the result of tutoring and was not a free and voluntary one. The same is not the factual position in this case.

42. Reliance was also placed on Maniben w/o (2007) 10 SCC 362, where S.B. Sinha, J. delivering the judgment held that minor discrepancies in dying declaration would not be material. The learned Judge also held that a dying declaration does not cease to be one just because death took place 25 days after the incident. This view of His Lordship is, if I may so with respect, consistent with Section 32 of the Indian Evidence Act. In support of this, the learned Judge relied on a decision of of Tamil Nadu, (2006) 9 SCC 240, in which case this Court gave certain guidelines on the basis of which dying declaration has to be appreciated. Relevant excerpts from the judgment in Ravikumar alias Kutti Ravi (supra) would show that the principles laid down therein are applicable in the facts of the present case. Those excerpts are extracted hereunder:

"5. Section 32 of the Evidence Act, 1872 is an exception to the general rule against hearsay. Sub-section (1) of Section 32 makes the statement of the deceased admissible which is generally described as "dying declaration". The dying declaration essentially means statements made by the person as to the cause of his death or as to the circumstances of the transaction resulting in his death. The admissibility of the dying declaration is based upon the principle that the sense of impending death produces in man's mind the same feeling as that of a conscientious and virtuous man under oath. The dying declaration is admissible upon consideration that the declarant has made it in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to the falsehood is silenced and the mind is induced by the most powerful consideration to speak the truth.

Notwithstanding the same, care and caution must be exercised in considering the weight to be given to these species of evidence on account of the existence of many circumstances which may affect their truth. The court has always to be on guard to see that the statement of the deceased was not the

result of either tutoring or prompting or a product of imagination. The court has also to see 18 and ensure 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 itself that the deceased was in fit mental condition to make the dying declaration, has to look for the medical opinion. Once the court is satisfied that the declaration was true and voluntary, it undoubtedly, can base its conviction on the dying declaration 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 the rule of prudence....."

43. Applying the aforesaid principle, this Court finds that in the facts and circumstances of the present case, the dying declaration has to be accepted.

44. Reliance was also placed on Sham Shankar 165, where the learned Judge referred to the issue of admissibility of the evidence recorded in dying declaration, on the maxim of "nemo moriturus paesumitur mentire - which means "a man will not meet his Maker with a lie in his mouth."

45. Therefore, if the aforesaid principles are applied in the instant case, the Court finds that the dying declarations in this case can be relied upon.

Maharashtra, (2007) 11 SCC 269, the Court held that if there are serious infirmities in the dying declaration, namely, discrepancy as to the place of occurrence, as to the burn marks and also discrepancy as to how the deceased was brought to the hospital, conviction on the basis of such a dying declaration is not sustainable.

47. In the instant case, there are no such discrepancies. Facts in all the five dying declarations match in their essential particulars.

Therefore, the case of Shaikh Bakshu (supra) is distinguishable from the present case.

(2007) 12 754, where the State came up in appeal against the order of acquittal granted by the High Court, this Court while reversing the High Court judgment of acquittal held that non issuance of certificate in the dying declaration to the effect that the statement of the deceased was recorded correctly before the Investigating Officer will not vitiate the same. Learned Judge held by referring to several judgments that the hypertechnical view should not be taken. The Bench also held that the view of this Court in (1999) 7 SCC 695, has not been correctly decided and is not the correct enunciation of law. On this judgment reliance was also placed by the learned counsel for the State and we are of the view that the ratio of this judgment delivered by S.B. Sinha, J. supports the State in the present case also.

of Maharashtra, (2006) 13 SCC 54 the same principles have been reiterated. In a case of multiple dying declarations, if there is no inconsistency, the same are reliable. Learned Judge also held that the mere fact that the accused who is alleged to have poured kerosene on the deceased was inimically disposed towards the deceased cannot by itself be a fact to disbelieve the dying declaration or to throw out the prosecution case.

(2006) 13 SCC 130 , S.B. Sinha, J. speaking for the Bench laid down, if there is an inconsistency between the two dying declarations, the Court should apply caution but the consistent part can be taken note of. His Lordship has also held that corroboration is required in the event of suspicion as

regards correctness or otherwise of the dying declaration.

51. In Sham Shankar Kankaria (supra), a Two-Judge Bench of this Court pointed out the rationale for relying on dying declaration on the principles laid 2 SCC 474. Learned Judge further held that the rule of corroboration on the facts stated in the declaration is only one of prudence and nothing else.

52. Various other judgments have been cited but they have discussed almost identical principles.

53. The judicially evolved rules of caution for acceptance of dying declaration have been stated by this Court in Paniben (Smt) (supra), and in para Nos. 18 and 19 of the said report, this Court has formulated several principles for accepting dying declaration, which have been laid down in various judgments of this Court in the last few decades.

The principles stated in Paniben (Smt) (supra) have been again repeated by this Court in Shakuntala said principles are so salutary and cardinal in nature that they deserve to be reiterated and this Court does so herein below:

"(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.) (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.) (iii) The 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 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.) (iv) Where a dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See Rasheed Beg v. State of M.P.) (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.) (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See Ram Manorath v. State of U.P.) (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.) (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.) (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 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.) (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.) (xi) Where there are more than one statements in the nature of dying declaration, the one first in point of time must be preferred. Of course, if the plurality of the dying declaration could be held to be trustworthy and reliable, it has to be accepted. (See Mohanlal Gangaram Gehani v. State of Maharashtra.)

13. In the light of the above principles, the acceptability of the alleged dying declaration in the instant case has to be considered. The dying declaration is only a piece of untested evidence and must, like any other evidence, satisfy the court that what is stated therein is the unalloyed truth and

that it is absolutely safe to act upon it. If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration. (See Gangotri Singh v.

State of U.P., Goverdhan Raoji Ghyare v.

State of Maharashtra, Meesala Ramakrishan v. State of A.P. and State of Rajasthan v. Kishore.)

14. There is no material to show that the dying declaration was the result or product of imagination, tutoring or prompting. On the contrary, the same appears to have been made by the deceased voluntarily. It is trustworthy and has credibility."

54. Just one more may be added to the aforesaid principles. This Court in Paramjit Singh & Ors. held that if all the details are given in the dying declaration, the same may not inspire confidence of the Court inasmuch as a neatly structured dying declaration may bring an adverse effect in the mind of the court. The Court has to appreciate the dying declaration as a whole to see whether a ring of truth emerges from the same.

55. In the facts of this case, it has already been noted that the evidence in the dying declaration has been corroborated and in the various dying declarations which have been given by the victim, in some of them, the required rule of caution has been followed specially in Exhibits 58, 87 and 48 and the statement given in the dying declaration is fairly consistent. There is also endorsement that the same has been read over and explained to the declarant.

56. It is also not in dispute that the declarant lived for more than fifteen days after the aforesaid incident. Therefore, the victim was physically in a position to give the declaration. Doctors have also opined that the declarant was conscious enough to make the declaration and all the judicially evolved rules of caution were observed in the instant case. That being the position, this Court finds no error on the part of the trial Court and High Court in finding the appellant guilty and convicting her under Section 302.

57. We find no merit in this appeal. It is dismissed accordingly.