SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Champa Lal

Crl.A.Nos.305-306 of 2003

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

01.04.2009

JUDGEMENT

Dr.Arijit Pasayat, J.

1. The State of Rajasthan has filed appeals against the judgment of a Division Bench of the Rajasthan High Court at Jodhpur allowing the appeal filed by the respondent directing his acquittal. Respondent faced trial for the alleged commission of offence punishable under Section 302 of *the Indian Penal Code, 1860* (in short the `IPC') and was sentenced to undergo imprisonment for life by learned Additional Sessions Judge, No.1, Jodhpur.

2. Background facts in a nutshell as projected by the prosecution are as follows:

> "On 11.12.1995 at about 10.30 p.m. Om Prakash (PW-8) submitted a written report at Police Station, Mahamandir, Jodhpur stating inter-alia that his sister Smt. Pani Devi was married to respondent about twenty five years back. From their wedlock five girls and one boy were born. His sister used to earn a livelihood and maintain the children. Respondent used to go for earning casually. Respondent used to demand money from her for consuming liquor. Respondent also used to harass and beat her.
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> On the fateful day, when she returned from her job, respondent was consuming liquor. Respondent abused his sister Pani Devi saying that she was keeping a number of paramours and she used to stay with them during day hours. "TUNE DAS HAATI BANA RAKKHE HAIN, DIN BHAR UNKE SAATH RAHTI HAI." (You have a number of friends and throughout the day, you stay with them.) He locked the children in one room. Thereafter, the respondent poured kerosene on her and with intention to kill her, threw a burning matchstick. His sister made hue and cry, which attracted a number of people including Pappu Ram (PW-7). Having seen the incident, Pappu Ram rushed to his house and narrated the incident. At that time, his cousin Doonger Singh (PW-6) was also sitting with him.

They rushed to the house of respondent and found that his sister Pani Devi was burning and lying in a pit. She was taken out of the pit by Prakash (PW- 18), brother of respondent. The fire was extinguished. On enquiry, deceased Pani Devi narrated the incident. She was taken for treatment to the M.G. Hospital. On this information, police registered a case for the offence under Section 307 IPC and proceeded with investigation. At 10:40 p.m., Joga Ram (PW-20), SHO Police Station Mahamandir, Jodhpur recorded the statement of Smt. Pani Devi in the M.G. Hospital in the presence of Dr. M.K. Parihar (PW-13). She died on 12.12.1995 at 4:10 a.m. The police prepared the site plan, inquest report and sent the dead body for post mortem. The post mortem was conducted by a Board of three doctors. The Board found it to be a case of hundred percent burn. In the opinion of the Board, the cause of death was shock due to extensive burns. After usual investigation police laid charge sheet against the respondent for the offence under Section 302 IPC. Trial was held as accused abjured guilt. Trial Court relied upon the dying declaration and held the accused guilty. In appeal, High Court directed acquittal.

The High Court observed that the dying declaration on which the prosecution relied and which the trial Court found to be the basis of conviction was not in accordance with applicable Police Rules relating to recording of dying declaration. Therefore, the same was to be kept out of consideration. Only on the basis of that the acquittal was directed."

3. Learned counsel for the appellant submitted that the authenticity of the dying declaration having not been doubted, acquittal is indefensible.

4. Learned counsel for the respondent on the other hand supported the judgment of the High Court.

5. It is to be noted that a decision of this Court in *Munna Raja v. State of Madhya Pradesh*[1], on which High Court placed reliance related to the efficacy of investigating officer himself recording the dying declaration and the necessity to discourage the practice. There is nothing in the decision to show that whenever the investigating officer records the dying declaration the same has to be kept out of consideration. In fact in *Dalip Singh v. State of Rajasthan*[2] it was observed as follows:

"8. There were two dying declarations of Ram Singh - one oral and the other written - which was recorded by the Assistant Sub-Inspector of Police, PW 28 on December 12, 1975. The oral dying declaration was made to PW 11 Tara Singh. Neither of the dying declarations was relied upon by the High Court because he had named Baldev Singh also. We may also add that although a dying declaration recorded by a police officer during the course of investigation is admissible under Section 32 of the Indian Evidence Act in view of the exception provided in sub-section (2) of Section 162 of the Code of Criminal Procedure, 1973, it is better to leave such dying declaration out of consideration until and unless the prosecution satisfies the court as to why it was not recorded by a Magistrate or by a doctor. As observed by this Court in Munnu Raja

v. State of M.P. the practice of the Investigating Officer himself recording a dying declaration during the course of investigation ought not to be encouraged. We do not mean to suggest that such dying declarations are always untrustworthy, but what we want to emphasize is that better and more reliable methods of recording a dying declaration of an injured person should be taken recourse to and the one recorded by the police officer may be relied upon if there was no time or facility available to the prosecution for adopting any better method."

(Underlined for emphasis)

6. In Dalip Singh's case (supra) it was categorically observed that in case there was no time or facility available to the prosecution for adopting any better method the dying declaration can be taken into consideration. In fact in the present case that is the categorical statement of PW-20. As rightly contended by learned counsel for the State the High Court discarded the statement even without indicating any reason.

7. It is to be noted that Jora Ram (PW-20) categorically stated that it was not possible to get a Magistrate to record the dying declaration. The High Court dis-believed him without even recording any reason therefor.

"The dying declaration was recorded in the presence of a doctor (PW-13). In addition, the evidentiary value of the evidence of PWs 7, 9 and 10 has not been considered in its proper perspective."

8. In *Ramawati Devi v. State of Bihar*[3] it was observed as follows:

"7. In our opinion neither of these two decisions relied on by the appellant is of any assistance in the facts and circumstances of this case. These decisions do not lay down, as they cannot possibly lay down, that a dying declaration which is not made before a Magistrate, cannot be used in evidence. A statement, written or oral, made by a person who is dead 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 person's death comes into question, becomes admissible under Section 32 of the Evidence Act. Such statement made by the deceased is commonly termed as dying declaration. There is no requirement of law that such a statement must necessarily be made to a Magistrate. What evidentiary value or weight has to be attached to such statement, must necessarily depend on the facts and circumstances of each particular case. In a proper case, it may be permissible to convict a person only on the basis of a dying declaration in the light of the facts and circumstances of the case. In the instant case, the dying declaration has been properly proved. It is significant to note that in the course of cross-examination of the witness proving the dying declaration, no questions were put as to the state of health of the deceased and no suggestion was made that the deceased was not in a fit state of health to make any such statement. The Doctor's evidence also clearly indicates that it was possible for the deceased to make the statement attributed to her in the dying declaration in which her thumb

impression had also been affixed. In the instant case, it cannot also be said that there is no corroborative evidence of the statement contained in the dying declaration. The evidence of PWs 1, 4, 5 and 8 clearly corroborates the statement recorded in the dying declaration.

We do not find any material on record on the basis of which the testimony of these witnesses can be disbelieved. It may also be noticed that none of these witnesses including the police officer who recorded the statement could be attributed with any kind of ill-feeling against the accused. The High Court has elaborately dwelt on this aspect and has carefully considered all the materials on record and also the arguments advanced on behalf of the appellant. We are in agreement with the view expressed by the High Court and in our opinion the High Court was right in upholding the conviction of the appellant."

9. In *Laxman v. State of Maharashtra*[4] it was observed as follows:

"3. The juristic theory regarding acceptability of a dying declaration is that such declaration is 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 man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with.

Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. 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 prompting 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."

10. It is to be noted that *Rajasthan Police Rules, 1964* on which the High Court has placed reliance is at the most a set of procedural guidelines. That cannot take away the effect of Section 32 of the *Indian Evidence Act, 1872* (in short the `Evidence Act'). To add to the vulnerability of the High Court's judgment, the High Court has concluded that there was no other reliable evidence. This conclusion runs counter to the High Court's earlier observation about the evidence of PWs 6 and 7 which was held to be credible. The evidence of PWs 8 and 9 provide ample corroboration. That being so, the appeals deserve to be allowed which we direct. The judgment of acquittal passed by the High Court is set aside and that of the trial Court is restored. The respondent shall surrender to custody forthwith to serve the remainder of sentence, if any.

[1]*(1976 (3) SCC 104)*
[2]*(1979 (4) SCC 332)*
[3]*(1983 (1) SCC 211)*
[4]*(2002 (6) SCC 710 at para 3)*