SUPREME COURT OF INDIA

Lakhan

Vs.

State of M.P.

Crl.A.No.2297 of 2009

(P. Sathasivam and Dr. B.S.Chauhan JJ.)

09.08.2010

JUDGEMENT

Dr.B.S.Chauhan, J.

1. This appeal has been preferred against the judgment and order dated 9.7.2008, passed by High Court of Madhya Pradesh, at Jabalpur, in Criminal Appeal No.2304/2000 by which the High Court has dismissed the said appeal, affirming the judgment and order of the Sessions Judge, Sagar, dated 31.8.2000 in Sessions Trial No.180/2000 and convicted the appellant under Section 302 of the Indian Penal Code, 1860 (hereinafter called "IPC") and sentenced him to life imprisonment.

2. Facts and circumstances giving rise to this case are that the appellant got married to Smt. Savita (hereinafter referred to as "deceased") on 22.6.1999. She was brought to the hospital by her in-laws on 27.2.2000 at about 7 p.m. in a burnt condition. Dr. Subhash Jain informed the Police Station, Gopalganj, about the arrival of the deceased, Smt. Savita, and a police party arrived at the hospital. The dying declaration was recorded by the Executive Magistrate, Smt. Madhu Nahar (DW.1), vide Exh.D/2, wherein, the deceased stated that when she was cooking, kerosene oil had been put behind her back, and when she moved herself back, her Saree caught fire. On 29.2.2000, ASI, Damodar Prasad Mahure (PW- 19), on the instructions of the Superintendent of Police recorded the second dying declaration (Ex.P/2), wherein, the deceased stated that appellant brought a kuppi (a metallic container for lighting) full of kerosene and poured it on her body and as a result of which kerosene oil spread all over her body. Thereafter, the fire was lit by chimney by him and she was burnt. She also stated that she had been brought to the hospital by her in-laws. After recording the dying declaration dated 29.2.2000, ASI Damodar Prasad (PW-19), recorded the Dehati Nalishi (Ex.P/14), at 10.40 p.m. on its basis. The kupee, as referred to in the dying declaration, was seized from the house of the appellant on 2.3.2000.

3. Smt. Savita died on 20.3.2000, and thus, there was an alteration of offences from 307/201 IPC to 302 IPC. After completing the investigation, charge sheet was filed against the

appellant before the court and the case was committed to the Court of Sessions where the appellant was tried. During trial, the prosecution examined as many as 19 witnesses and in the form of documentary evidence, reliance was placed on the statement of Savita, deceased, in the form of dying declaration dated 29.2.2000 (Ex.P/2), Dehati Nalishi (Ex.P/14), FIR (Ex.20), deposition of ASI (PW-19) dated 29.2.2000 and case diary etc. In defence, appellant placed reliance on the statement of the deceased dated 27.2.2000 (Ex.D/2), and examined Smt. Madhu Nahar (DW.1). The appellant made a statement under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter called as "Cr.P.C."), that he was, by no means, involved in the case. However, the appellant did not explain under what circumstances his wife was burnt. The trial Court, vide judgment and order dated 31.8.2000, found the appellant guilty of offence under Section 302 IPC and accordingly sentenced him to imprisonment for life.

4. Being aggrieved, the appellant preferred Criminal Appeal No. 2304 of 2000 before the High Court of Madhya Pradesh, at Jabalpur, which has also been dismissed vide judgment and order dated 9.7.2008. Hence, this appeal.

5. Shri Sudhir Kulshreshtha, learned counsel appearing for the appellant, has submitted that it is a case of circumstantial evidence as no eye-witness has been examined by the prosecution in support of its case. There has been no allegation of a demand of dowry, though the marriage had taken place only 9-10 months prior to the death of the deceased, Savita. The only allegation against the appellant had been of harassment, as alleged by the parents of the deceased, who were examined as prosecution witnesses before the trial Court. There were two dying declarations in the case.

> "The first was recorded by Ms. Madhu Nahar, the Executive Magistrate (DW.1), which should have been accepted in toto, without raising any doubt to its veracity as compared to the dying declaration, unauthorisedly recorded by Shri Damodar Prasad Mahure, the ASI (PW.19), subsequently. Where there are two dying declarations, the first dying declaration recorded by the Magistrate should have been relied upon, particularly when both the witnesses to the second dying declaration had been declared hostile. Therefore, the appeal deserves to be allowed."

6. Per contra, Shri Siddharth Dave along with Ms. Vibha Datta Makhija, learned counsel for the respondent-State, has vehemently opposed the appeal contending that the first dying declaration had been recorded by the Executive Magistrate when the deceased, Savita, had been tutored by her in-laws who had brought her to the hospital. At that time the deceased was under duress/influence of her in-laws.

> "However, there cannot be any doubt regarding contents of the second dying declaration recorded by the police officer, particularly when it stands corroborated with other relevant evidence. The appeal lacks merit and is liable to be dismissed."

7. We have considered the rival submissions made by learned counsel for the parties. Counsel from both the sides have canvassed their submissions solely on the issue as to which of the dying declarations should have been relied upon by the courts below. No other issue is being agitated.

> "Therefore, we restrict ourselves only to examining the limited issue of which dying declaration can be relied upon in the facts and circumstances of this case."

8. The doctrine of dying declaration is enshrined in the legal maxim "Nemo moriturus praesumitur mentire", which means "a man will not meet his maker with a lie in his mouth". The doctrine of Dying Declaration is enshrined in Section 32 of the Indian Evidence Act, 1872 (hereinafter called as, "Evidence Act") as an exception to the general rule contained in Section 60 of the Evidence Act, which provides that oral evidence in all cases must be direct i.e. it must be the evidence of a witness, who says he saw it. The dying declaration is, in fact, the statement of a person, who cannot be called as witness and, therefore, cannot be cross-examined. Such statements themselves are relevant facts in certain cases.

9. This Court has considered time and again the relevance/probative value of dying declarations recorded under different situations and also in cases where more than one dying declaration has been recorded. The law is that if the court is satisfied that the dying declaration is true and made voluntarily by the deceased, conviction can be based solely on it, without any further corroboration. It is neither a rule of law nor of prudence that a dying declaration cannot be relied upon without corroboration. When a dying declaration is suspicious, it should not be relied upon without having corroborative evidence. 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 must be in a fit state of mind to make the declaration and must identify the assailants. Merely because a dying declaration does not contain the details of the occurrence, it cannot be rejected and in case there is merely a brief statement, it is more reliable for the reason that the shortness of the statement is itself a guarantee of its veracity.

> "If the dying declaration suffers from some infirmity, it cannot alone form the basis of conviction. Where the prosecution's version differs from the version given in the dying declaration, the said declaration cannot be acted upon. (vide : *Kushal Rao v. State of Bombay*[1], *Rasheed Beg & Ors. v. State of Madhya Pradesh*[2], *K. R. Reddy & Anr. v. The Public Prosecutor*[3], *State of Maharashtra v. Krishnamurti Laxmipati Naidu*[4], *Uka Ram v. State of Rajasthan*[5], *Babulal & Ors. v. State of M.P.*[6], *Muthu Kutty & Anr. v. State*[7], *State of Rajasthan v. Wakteng*[8], *and Sharda v. State of Rajasthan*[9]]."

10. In *Munnawar & Ors. v. State of Uttar Pradesh & Ors.*[10], this Court held that a dying declaration can be relied upon if the deceased remained alive for a long period of time after the incident and died after recording of the dying declaration. That may be evidence to show

that his condition was not overtly critical or precarious when the dying declaration was recorded.

11. A dying declaration recorded by a competent Magistrate would stand on a much higher footing than the declaration recorded by officer of lower rank, for the reason that the competent Magistrate has no axe to grind against the person named in the dying declaration of the victim, however, circumstances showing anything to the contrary should not be there in the facts of the case. [vide *Ravi Chander & Ors. v. State of Punjab*[11], *Harjit Kaur v. State of Punjab*[12], *Koli Chunilal Savji & Anr. v. State of Gujarat*[13] *and Vikas & Ors. v. State of Maharashtra*[14].]

12. In *Balak Ram v. State of U.P.*[15] the question arose as to whether a dying declaration recorded by a higher officer can be discarded in case of multiple dying declarations. The Court held as under:- "The circumstances surrounding the dying declaration, though uninspiring, are not strong enough to justify the view that officers as high in the hierarchy as the Sub-Divisional Magistrate, the Civil Surgeon and the District Magistrate hatched a conspiracy to bring a false document into existence. The Civil services have no platform to controvert allegations, howsoever grave and unfounded. It is therefore, necessary that charges calculated to impair their career and character ought not to be accepted except on the clearest proof. We are not prepared to hold that the dying declaration is a fabrication."

13. In *Sayarabano@Sultanabegum v. State of Maharashtra*[16] two Dying Declarations had been recorded. As per the first declaration, the deceased had met with an accident. She was hit by the kerosene lamp which fell on her body and caught fire. While recording the second declaration, the Judicial Magistrate asked her why she was changing her statement. The deceased replied that her Mother-in-Law had told her not to give any statement against the family members of her in-laws and that was the reason, why she had not involved any person in the earlier statement.

> "But, in fact, it was her Mother-in-Law who threw the kerosene lamp on her and thus, she was burnt. She also stated that her Mother-in-Law was harassing her. In such a situation, this Court held that the second dying declaration was true and inspired confidence. Ill treatment of the decreased was clearly established and completely proved on the basis of the evidence of other witnesses."

14. In case, there are inconsistent dying declarations, the Court must rely upon any other evidence, if available, as it is not safe to act only on inconsistent dying declarations and convict the accused. [Vide *Lella Srinivasa Rao v. State of A.P.*[17]].

15. In *Sher Singh & Anr. v. State of Punjab*[18] a case of bride burning, three dying declarations had been recorded. In the first dying declaration, the decreased had denied the role of the accused persons. In second dying declaration deceased attributed a role to the accused but the said declaration did not contain the Certificate of the Doctor that the deceased was in a fit state of mind to make a declaration, however, the Magistrate, who

recorded the declaration, certified that the deceased was in a conscious state of mind and was in a position to make the statement to him. The third dying declaration was recorded by a police officer after the Doctor certified that she was in a fit state of mind to give the statement. This Court held that the conviction could be based on the third dying declaration as it was consistent with the second dying declaration and the oral dying declaration made to her uncle, though with some inconsistencies. First declaration was made immediately after she was admitted in the hospital and was under threat and duress by her Mother-in-Law that she would be admitted in hospital only if she would give a statement in favour of the accused persons.

> "126, this Court held that a statement of the deceased recorded by a police officer in a routine manner as a complaint and not as a dying declaration can also be treated as dying declaration after the death of the injured and relied upon if the evidence of the prosecution witnesses clearly establishes that the deceased was conscious and was in a fit state of health to make the statement."

17. In *Chairman & Managing Director, V.S.P. & Ors. v. Goparaju Sri Prabhakara Hari Babu*[19] this Court, placing reliance upon the earlier Judgment in *Kundula Bala Subrahmanyam & Anr. v. State of Andhra Pradesh*[20] held that it is not the plurality of dying declarations but the reality thereto that aids weight to the prosecution's case. If a dying declaration is found to be voluntary, reliable and made in a fit mental condition, it can be relied upon without any corroboration. If there is more than one dying declaration, they should be consistent. In case of inconsistencies between two or more dying declarations made by the deceased, the Court has to examine the nature of inconsistencies namely, whether they are material or not and in such a situation, the Court has to examine the multiple dying declarations in the light of the various surrounding facts and circumstances.

18. In *Heeralal v. State of Madhya Pradesh*[21] this Court considered the case having two dying declarations, the first recorded by a Magistrate, wherein it was clearly stated that the deceased had tried to set herself ablaze by pouring kerosene on herself. However, the subsequent declaration was recorded by another Magistrate and a contrary statement was made. This Court set aside the conviction after appreciating the evidence and reaching the conclusion that the courts below came to abrupt conclusions on the purported possibility that the relatives of the accused might have compelled the deceased to give a false dying declaration. No material had been brought on record to justify such a conclusion.

19. In *State of Andhra Pradesh v. P. Khaja Hussain*[22] this Court set aside the conviction as there was a variation between the two dying declarations about the manner in which the deceased was set on fire and for the reason that there was no other evidence to connect the accused with the crime.

20. In view of the above, the law on the issue of dying declaration can be summarized to the effect that in case, the Court comes to the conclusion that the dying declaration is true and reliable, has been recorded by a person at a time when the deceased was fit physically and

mentally to make the declaration and it has not been made under any tutoring/duress/prompting; it can be the sole basis for recording conviction. In such an eventuality no corroboration is required. In case, there are multiple dying declarations and there are inconsistencies between them, generally, the dying declaration recorded by the higher officer like a Magistrate can be relied upon, provided that there is no circumstance giving rise to any suspicion about its truthfulness. In case, there are circumstances wherein the declaration had been made, not voluntarily and even otherwise, it is not supported by the other evidence, the Court has to scrutinize the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance.

21. The case at hand requires to be examined in the light of the aforesaid settled legal propositions in this regard. In the instant case, the first dying declaration reads as under:-

> "I was cooking and kerosene was put behind, I did not see to it. When I turned back on my knee, my sari caught fire"
>
> However, the deceased has further stated that she was brought to the hospital by her Father-in-Law and Mother-in- Law. The declaration was recorded by the Executive Magistrate after getting a certificate from the Doctor that the deceased was in a fit physical and mental condition to give the statement."

22. The second dying declaration was recorded by Shri Damodar Prasad Mahure, Assistant Sub-Inspector of Police (PW.19). He was directed by the Superintendent of Police on telephone to record the statement of the deceased, who had been admitted in the hospital. In that statement, she had stated as under :-

> "On Sunday, in the morning, at about 5.30 AM, my husband Lakhan poured the kerosene oil from a container on my head as a result of which kerosene oil spread over my entire body and that he (Lakhan) put my Sari a fire with the help of a Chimney, due to which I got burnt."
>
> She had also deposed that she had written a letter to her parents requesting them to fetch her from the matrimonial home as her husband and in-laws were harassing her.
>
> The said dying declaration was recorded after getting a Certificate from the Doctor stating that she was in a fit physical and mental condition to give the statement."

23. As per the Injury Report and the medical evidence it remains fully proved that the deceased had the injuries on the upper part of her body. The Doctor, who had examined her at the time of admission in hospital, deposed that she had burn injuries on her head, face, chest, neck, back, abdomen, left arm, hand, right arm, part of buttock and some part of both the thighs. The deceased was 65% burnt. At the time of admission, the smell of kerosene was coming from her body.

24. After appreciating the evidence on record the High Court observed as under :- "It is a matter of common knowledge that if a person would move back and his/her body comes in contact of some burning object, on the front side of the body i.e. chest, abdominal region, face etc. would not burn. In the first dying declaration, the deceased has said that while moving back, her Sari caught fire. We have also gone through the reasonings assigned by learned Sessions Judge in para 17 of the judgment and we find the reasons to be quite cogent."

25. Undoubtedly, the first dying declaration had been recorded by the Executive Magistrate, Smt. Madhu Nahar (DW.1), immediately, after admission of the deceased, Savita, in the hospital and the Doctor had certified that she was in a fit condition of health to make the declaration. However, as she had been brought to the hospital by her Father-in-Law and Mother-in-Law and the medical report does not support her first dying declaration, the trial Court and the High Court have rightly discarded the same. Even before us, Shri Kulshreshtha, learned counsel appearing for the appellant, has not been able to explain under what circumstances in the accident case as disclosed by the deceased in her first declaration, the deceased could get the injuries only on the upper part of the body and smell of kerosene was coming from her body. The second dying declaration fully stands corroborated not only by the medical evidence but oral dying declarations made by the deceased to her parents, i.e. Phool Singh (PW.1) and Sushila (PW.3) who were examined in the court.

26. Sh. Damodar Prasad Mahure, ASI, (PW.19), in his cross- examination, has explained that he was not aware of the factum of recording of the first Dying Declaration of the deceased on 27.02.2000. Therefore, there was no reason for him to ask the deceased about the same. More so, it is evident that Dr. Umesh Kumar Shastri certified the mental and physical condition of the deceased at the time of recording of the second Dying Declaration, while at the time of recording of the first Dying Declaration, Dr. Subhash Jain (PW13) certified the mental and physical condition of the deceased.

> "Undoubtedly, the witnesses of the second Dying Declaration namely, Premchand Jain (PW9) and Sanjay (PW18) turned hostile and did not support the prosecution case, however, they have admitted their signatures on the Dying Declaration and could not give any explanation as to why they had attested the said Declaration. Thus, in view of the above, the second Dying Declaration cannot be held to be a fabrication."

27. In the instant case, the deceased Savita was brought to the hospital by her Mother-in-Law and Father-in-Law and she was under their influence. The Trial Court is right in making an observation that generally, most women do not accuse their husbands for sentimental and religious reasons.

28. Thus, in view of the above, we reach the following inescapable conclusions on the questions of fact :-

"(a) After having the burn injuries, Savita, deceased, was brought to the hospital by her Father-in-Law and Mother-in-Law and they had tutored not to give any statement against her family members.

(b) The first Dying Declaration was recorded by the Executive Magistrate, Smt. Madhu Nahar (DW.1), after getting a Certificate from the Doctor, in which Savita did not make allegation against any of her family members, rather, she said that it was an accident. However, such a statement is not supported by the medical evidence for the reason that the injuries on her body were found on the upper part of her body and it was not possible to have such burn injuries in case of the kind of accident as she had disclosed in the first Declaration.

(c) The second Dying Declaration was recorded by a Police Officer on the instruction of the Superintendent of Police after getting a Certificate of fitness from the Doctor, which is corroborated by the medical evidence and free from any suspicious circumstances. More so, it stands corroborated by the oral declaration made by the deceased to her parents, Phool Singh (PW.1), father and Sushila (PW3), mother.

(d) A kuppi, the container, was recovered by the Investigating Officer from the house of the appellant.

(e) Savita, deceased, died on 20.03.2000, after about 21 days of recording of the second Dying Declaration.

Thus, it is evident that she was not in a precarious condition or unable to make the statement, rather this fact suggests that she was in a stable condition.

(f) There is nothing on record to show for what reason, the witnesses would depose falsely against the appellant."

29. In view of the above, we are of the view that in the facts and circumstances of this case, the concurrent findings of fact recorded by the Courts below do not warrant any interference from this Court. The appeal lacks merit and is accordingly dismissed.

[1] *AIR 1958 SC 22* [2]*AIR 1974 SC 332* [3]*AIR 1976 SC 1994* [4]*AIR 1981 SC 617*
[5]*(2001) 5 SCC 254* [6]*(2003) 12 SCC 490* [7]*(2005) 9 SCC 113* [8]*AIR 2007 SC 2020*
[9]*(2010) 2 SCC 85* [10]*(2010) 5 SCC 451* [11]*(1998) 9 SCC 303* [12]*(1999) 6 SCC 545*
[13]*(1999) 9 SCC 562* [14]*(2008) 2 SCC 516* [15]*AIR 1974 SC 2165* [16]*(2007) 12 SCC 562*
[17]*(2004) 9 SCC 713* [18]*AIR 2008 SC 1426* [19]*(2008) 5 SCC 468* [20]*(1993) 2 SCC 684*
[21]*(2009) 12 SCC 671* [22]*(2009) 15 SCC 120*