SUPREME COURT OF INDIA

M.Sarvana K.D.Saravana

Vs.

State of Karnataka

Crl.A.No.79 of 2010

(Swatanter Kumar and Fakkir Mohamed Ibrahim Kalifulla, JJ.)

24.07.2012

JUDGMENT

Swatanter Kumar, J.

1. The present appeal is directed against the judgment of the High Court of Karnataka, Bangalore, dated 4th December, 2007 confirming the judgment of conviction and order of sentence passed by the Fast Track (Sessions) Judge-III, Bangalore City, dated 26th October and 28th October, 2004, respectively convicting the appellant under Section 302 of the Indian Penal Code, 1860 (for short, the 'IPC') and awarding him sentence of rigorous imprisonment for life and a fine of Rs.10,000/-, in default thereto to undergo further rigorous imprisonment for a period of three and a half years.

2. The facts leading to the demise of the deceased Kuppa can be stated as follows: Head Constable Sadashivaiah, PW2, received an intimation at about 10.30 p.m. in the night of 14th February, 2003 from the doctor on duty at the Victoria Hospital stating that a badly injured person had been admitted to the Victoria Hospital. After receiving this information, PW2 proceeded to Victoria Hospital and approached the duty doctor, Dr. Girija. The said police officer found the deceased in a sound state of mind and the duty doctor duly endorsed regarding fitness of the deceased to make a statement. Accordingly, the Head Constable recorded the statement of the deceased Kuppa and the same was exhibited as Ex.P2. When PW2 was examined as a witness in the Court, he identified the MLC report, Ex.P3 and also identified the endorsement of the duty doctor on the said dying declaration regarding fitness of the injured as Ex.P2 (b). After recording the statement, the same was handed over to the PSI Shivanna for further investigation. According to

the statement of the deceased, as recorded by PW2, there was previous animosity between him and the appellant and on 14th February, 2003 at 7.45 p.m. when he and PW3 were proceeding to have meals and go to their house after the day's work, they met the appellant

who said that he would do away with the deceased and stabbed him with knife on his stomach due to which he fell down. Even thereafter, the accused did not spare him and repeatedly assaulted him with glass bottles on his head and face, causing grievous injuries. Anthoni, PW3, took him to the hospital and got him admitted.

3. PW3 has stated in his statement before the Court that on 14th February, 2003 at about 7.15 p.m., he and the deceased were proceeding towards hotel for tiffin, at Double Road, Lal Bagh when they were near the MP Stores, the appellant was standing there. Looking at Kuppa, the appellant had started abusing Kuppa and uttered that he would commit murder of Kuppa. Immediately thereafter, the appellant started assaulting Kuppa on the right side of his stomach with a knife and caused grievous injuries. Kuppa fell down, meanwhile, the appellant assaulted him with a bottle on the forehead and ran away. The people had gathered there. Then, he had taken Kuppa to the hospital and got him admitted. This witness duly identified the knife, MO-1 used by the appellant as well as the broken glass pieces of the bottle marked as MO-2. He even identified the T-shirt that Kuppa was wearing on the day of the incident which was blood-stained marked as MO-3. Moreover, he identified the towel as MO-4 and the blood- stained pant of Kuppa as MO-5. This witness stated that he knew both the deceased and the accused for the last more than 12 years. According to this witness, the street light was there at the time of the incident.

4. Unfortunately, Kuppa succumbed to his injuries and died in the hospital on 15th February, 2003 at 7.00 a.m. Dr. Naveen (PW1) informed the police and prepared the death memo, Ex.P1. Dr. Udayashankar (PW8) performed the post-mortem on the body of the deceased and noticed the injuries of the deceased and the cause of death as follows: -

> "Injuries :- External examination :-Length of the body is 170 cms. Well built. Dark brown complexion. Rigor mortis is present all over the body and liver mortis faintly present on the back. Hospital bandage is present over lower chest and abdomen, intravenous injection mark present over left forearm. Face is smeared with dried blood stains and also both palms foot. External injuries: 1. Surgically sutured shaped wound present over the vertex. Long limb measures 6 cms. Short limb measures 5 cms. On removal of the sutures, they are cut wounds, skull deep.
>
> Scalp skull:
>
> External injuries described. Extra vasation of blood present around corresponding external injuries. Skull intact. Membranes pale.
>
> Brain - Pale."

"Opinion as to cause of death: -Death was due to shock and hemorrhage consequent to injuries sustained."

5. We may also notice here that Dr. K.M. Chennakeshava (PW13) was examined to identify the signature and writing of Dr. Girija who had endorsed the dying declaration as she had left the Victoria Hospital and had gone to America prior to the time when the matter came up for recording of evidence in the Court. PW9, Nanjunappa, the Officer from the Forensic Science Laboratory (FSL) had identified MOs1 to 5 and 7 and stated that they contained blood stains and MOs 3 to 5 and 7 were containing blood having 'O' positive group which was the blood group of the deceased.

6. Besides the above, the prosecution, in order to establish its case, had examined 15 witnesses and exhibited Exhibits P1 to P20. After completion of the prosecution evidence, the appellant was examined and in his statement under Section 313 of the Code of Criminal Procedure, 1973 (CrPC), he took the stand of complete denial and stated nothing more.

7. The learned counsel appearing for the appellant contended that there was inordinate delay in lodging the First Information Report (FIR) and in any case, the FIR having been lodged by a person who was not an eye- witness, would render the same inadmissible. Then it is contended that PW7 had been declared hostile as he did not support the case of the prosecution and further that the dying declaration recorded by the police is inadmissible and cannot be made the sole basis for conviction of the appellant. The contention, therefore, is that the appellant is entitled to acquittal.

8. We find no merit in either of these contentions raised on behalf of the appellant. Firstly, there was no inordinate delay in lodging the FIR. The incident occurred at 7.45 p.m. on 14th February, 2003. People had gathered at the place of the incident and PW3, who was accompanying the deceased at the relevant time, had taken him to the hospital. The doctor on duty, after having seen the injured person, had reported the matter to the police and then the FIR was lodged. This FIR, Ex.P.10, was lodged at 11.30 p.m. on the same day. We do not think that there had been any inordinate delay in lodging the FIR. The conduct of both the doctor on duty and PW3 was very normal. The priority for PW3 was not to go to the police station and lodge the FIR but to take the deceased, who was seriously injured at that time, to the hospital at the earliest. He did the latter and correctly so. The doctor had cared first to take steps to give medical aid to the injured and make every effort to save the deceased rather than calling the police instantaneously. However, without any undue delay, the doctor informed the police. The police came to the hospital and it was only after the concerned police officer (PW2) had met the duty doctor and seen the injured and recorded his statement that the FIR was registered. It is a settled principle of law that an FIR can be lodged by any

person, even by telephonic information. It is not necessary that an eye-witness alone can lodge the FIR. In view of these facts, no court can hold that there is inordinate delay in lodging the FIR by accepting the contention raised on behalf of the appellant.

9. Coming to the first leg of the second submission raised by the learned counsel for the appellant, the contention is that PW7, who was stated to be an eye-witness, did not completely support the case of the prosecution, when he was examined before the court. The mere fact that one of the witnesses produced by the prosecution had been declared hostile and did not support the case of the prosecution would not be fatal to the case of the prosecution, particularly when the prosecution has been able to prove its case by other cogent and reliable evidence. In the present case, the prosecution has not only proved its case by independent witnesses, eye- witnesses, medical evidence and the report of the FSL, but has also established its case beyond reasonable doubt on the strength of the dying declaration of the deceased himself. Reference in this regard can be made to the decisions of this Court in *Atmaram Ors. v. State of Madhya Pradesh*[1]*Jodhraj Singh v. State of Rajasthan*[2]*and Sambhu Das @ Bijoy Das Anr. v. State of Assam*[3].

10. We may notice, at this stage that the court can even take into consideration the part of the statement of a hostile witness which supports the case of the prosecution. Therefore, it cannot be said that whenever prosecution witnesses are declared hostile, it must prove fatal to the case of the prosecution. Reference in this regard can be made to the judgment of this Court in the case of *Bhajju @ Karan Singh v. State of M.P*[3]*Govindaraju @ Govinda v. State by Sriramapuram Police Station and Anr*[5].Coming to the admissibility and evidentiary value of the dying declaration made by the deceased, the factum of death of the deceased has been proved. PW3 has given the eye-version of the occurrence. He was a witness to the hurling of abuses as well as inflicting of both the fatal injuries by the appellant - one by knife and the other with a glass bottle on the forehead of the deceased. He had taken injured-Kuppa to the hospital and has categorically stated that on his way to the hospital, the deceased was conscious, though in great pain. After reaching the hospital, the duty doctor, Dr. Girija, who could not be examined as a witness because she had left the service, had informed about admission of an injured person in the hospital to Head Constable, PW2, who came to the hospital and after getting the certification from the duty doctor in regard to fitness of the deceased to make a statement, had recorded the statement of the deceased under Section 161 of the CrPC. This statement became the dying declaration of the deceased because he expired on the very next day, i.e. 15th February, 2003 in the morning. According to the said dying declaration, the appellant had clearly stated that he would murder him whereafter he took out the knife and stabbed the deceased. Still not satisfied with this assault, the appellant went to the shop of one Kaka and brought a bottle and spilled the liquid all over his head and then inflicted bleeding injury on his forehead. The deceased in his statement has categorically and

with clarity stated that the accused K.D. Saravana had inflicted both injuries upon his body. These injuries proved fatal leading to the death of the deceased.

12. We may refer to some of the judgments of this Court in regard to the admissibility and evidentiary value of a dying declaration. In the case of Bhajju (supra), this Court clearly stated that Section 32 of the Evidence Act, 1872 was an exception to the general rule against admissibility of hearsay evidence. Clause (1) of Section 32 makes statement of the deceased admissible, which has been generally described as dying declaration. The court, in no uncertain terms, held that it cannot be laid down as an absolute rule of law that dying declaration could not form the sole basis of conviction unless it was corroborated by other evidence. The dying declaration, if found reliable, could form the basis of conviction. Similar principle was stated by this Court in the case of *Surinder Kumar v. State of Haryana*[6]wherein the Court, though referred to the above principle, but on facts and because of the fact that the dying declaration in the said case was found to be shrouded by suspicious circumstances and no witness in support thereof had been examined, acquitted the accused. However, the Court observed that when a dying declaration is true and voluntary, there is no impediment in basing the conviction on such a declaration, without corroboration.

13. In the case of *Chirra Shivraj v. State of Andhra Pradesh*[7]the Court added a caution that a mechanical approach in relying upon the dying declaration just because it is there, is extremely dangerous. The court has to examine a dying declaration scrupulously with a microscopic eye to find out whether the dying declaration is voluntary, truthful, made in a conscious state of mind and without being influenced by other persons and where these ingredients are satisfied, the Court expressed the view that it cannot be said that on the sole basis of a dying declaration, the order of conviction could not be passed.

14. In the case of *Laxman v. State of Maharashtra*[8]the Court while dealing with the argument that the dying declaration must be recorded by a magistrate and the certificate of fitness was an essential feature, made the following observations. The court answered both these questions 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."

15. In *Govindaraju @ Govinda v. State of Sriramapuram P.S. Anr*[9] the court inter alia discussed the law related to dying declaration with some elaboration: -

> "23. Now, we come to the second submission raised on behalf of the appellant that the material witness has not been examined and the reliance cannot be placed upon the sole testimony of the police witness (eyewitness). It is a settled proposition of law of

evidence that it is not the number of witnesses that matters but it is the substance. It is also not necessary to examine a large number of witnesses if the prosecution can bring home the guilt of the accused even with a limited number of witnesses. In *Lallu Manjhi v. State of Jharkhand*[10]this Court had classified the oral testimony of the witnesses into three categories:

(a)Wholly reliable;

(b)Wholly unreliable; and

(c) Neither wholly reliable nor wholly unreliable. In the third category of witnesses, the court has to be cautious and see if the statement of such witness is corroborated, either by the other witnesses or by other documentary or expert evidence. Equally well settled is the proposition of law that where there is a sole witness to the incident, his evidence has to be accepted with caution and after testing it on the touchstone of evidence tendered by other witnesses or evidence otherwise recorded. The evidence of a sole witness should be cogent, reliable and must essentially fit into the chain of events that have been stated by the prosecution. When the prosecution relies upon the testimony of a sole eyewitness, then such evidence has to be wholly reliable and trustworthy. Presence of such witness at the occurrence should not be doubtful. If the evidence of the sole witness is in conflict with the other witnesses, it may not be safe to make such a statement as a foundation of the conviction of the accused. These are the few principles which the Court has stated consistently and with certainty. Reference in this regard can be made to *Joseph v. State of Kerala*[11]*and Tika Ram v. State of M.P*[12]*Even in Jhapsa Kabari v. State of Bihar*[13]this Court took the view that if the presence of a witness is doubtful, it becomes a case of conviction based on the testimony of a solitary witness. There is, however, no bar in basing the conviction on the testimony of a solitary witness so long as the said witness is reliable and trustworthy. In Jhapsa Kabari (supra), this Court noted the fact that simply because one of the witnesses (a fourteen-year-old boy) did not name the wife of the deceased in the fardbeyan, it would not in any way affect the testimony of the eyewitness i.e. the wife of the deceased, who had given a graphic account of the attack on her husband and her brother-in-law by the accused persons. Where the statement of an eyewitness is found to be reliable, trustworthy and consistent with the course of events, the conviction can be based on her sole testimony. There is no bar in basing the conviction of an accused on the testimony of a solitary witness as long as the said witness is reliable and trustworthy. In the present case, the sole eyewitness is stated to be a police officer i.e. PW 1. The entire case hinges upon the trustworthiness, reliability or otherwise of the testimony of this witness. The contention raised on

behalf of the appellant is that the police officer, being the sole eyewitness, would be an interested witness, and in that situation, the possibility of a police officer falsely implicating innocent persons cannot be ruled out. Therefore, the first question that arises for consideration is whether a police officer can be a sole witness. If so, then with particular reference to the facts of the present case, where he alone had witnessed the occurrence as per the case of the prosecution.It cannot be stated as a rule that a police officer can or cannot be a sole eyewitness in a criminal case. It will always depend upon the facts of a given case. If the testimony of such a witness is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidence, then the statement of such witness cannot be discarded only on the ground that he is a police officer and may have some interest in success of the case. It is only when his interest in the success of the case is motivated by overzealousness to an extent of his involving innocent people; in that event, no credibility can be attached to the statement of such witness. This Court in Girja Prasad while particularly referring to the evidence of a police officer said that it is not the law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption applies as much in favor of a police officer as any other person. There is also no rule of law which lays down that no conviction can be [pic] recorded on the testimony of a police officer even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. If such a presumption is raised against the police officers without exception, it will be an attitude which could neither do credit to the magistracy nor good to the public, it can only bring down the prestige of the police administration."

16. The dying declaration is the last statement made by a person at a stage when he in serious apprehension of his death and expects no chances of his survival. At such time, it is expected that a person will speak the truth and only the truth. Normally in such situations the courts attach the intrinsic value of truthfulness to such statement. Once such statement has been made voluntarily, it is reliable and is not an attempt by the deceased to cover up the truth or falsely implicate a person, then the courts can safely rely on such dying declaration and it can form the basis of conviction. More so, where the version given by the deceased as dying declaration is supported and corroborated by other prosecution evidence, there is no reason for the courts to doubt the truthfulness of such dying declaration.

17. Reverting to the facts of the present case, the dying declaration was made after due certification of fitness by the doctor and was recorded by a police officer in discharge of his normal functions. The statement was made by the deceased voluntarily and was a truthful description of the events. This version is fully supported by PW3, the witness who had

accompanied the deceased at all relevant times, right from inflicting of the injury till the time of his death. The serological report, Ex.P16, duly established that the blood group on the knife used for the assault and that of the deceased was O+. This knife had been recovered vide Mahazar Ex.P-12 by PW11 Srinivasa PSI in furtherance to the voluntary statement of the appellant in presence of PW14, the Panch. The father of the deceased, PW5, has also clearly stated that there was previous animosity between the deceased and the appellant. In other words, the complete chain of events, pointing unexceptionally towards the guilt of the appellant has been established by the prosecution thereby proving the case of the prosecution beyond any reasonable doubt.

18. Thus, we see no reason to interfere with the concurrent judgments of conviction and order of sentence passed by the Courts below. The appeal, therefore, is dismissed.

Judgment Referred

[1](2012) 5 SCC 0738
[2](2007) 15 SCC 0294
[3](2010) 10 SCC 0374
[4](2012) 4 SCC 0327
[5](2012) 4 SCC 0722
(2011) 10 SCC 173
(2010) 14 SCC 444
(2002)6 SCC 70010
[9](2012) 4 SCC 0722
[10](2003) 2 SCC 0401
[11](2003) 1 SCC 0465
[12](2007) 15 SCC 0760
[13](2001) 10 SCC 0094