SUPREME COURT OF INDIA

Mallella Shyamsunder

Vs.

State of Andhra Pradesh

Crl.A.No.1381 of 2011

(Vikramajit Sen and Kurian Joseph JJ.)

29.10.2014

JUDGMENT

KURIAN, J.:

1. Nemo moriturus praesumitur mentire literally means no one at the point of death is presumed to lie. Nobody normally may lie and die for fear of meeting his maker.

2. Acceptability and reliability of statement made by a person who is about to die, which statement, in common parlance, is known as dying declaration, has been the subject matter of several reported decisions of this Court and, therefore, it is not necessary to add one more to the same. However, for the purpose of understanding the first principles, we shall refer to a Constitution Bench decision in Laxman v. State of Maharashtra[1], wherein at paragraph-3, it is held 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. Appellant is the first accused in Sessions Case No. 197 of 2002 on the file of the Court of Second Additional Sessions Judge, Mahabubnagar, Andhra Pradesh. He was sentenced to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code (45 of 1860) (hereinafter referred to as ˜IPC™). He was also sentenced to undergo rigorous imprisonment for one year under Section 498A of IPC. The second accused who is the mother of the first accused, was convicted under Section 498A of IPC and sentenced to undergo one year rigorous imprisonment. The High Court, however, taking note mainly of the age of the second accused, maintaining the conviction under Section 498A of IPC, reduced the sentence to the period already undergone.

4. The victim, Smt. Kalyani, since deceased, was married to the appellant on 26.04.2000. The allegation is that on account of non-payment of balance of the promised dowry, she was being ill treated and harassed by both the accused. On 23.08.2001, the appellant sent her out of the matrimonial home demanding the balance amount of dowry. However, PW-1-mother of the deceased took her to the house of the accused and gave him Rs.1,000/-, gold ear studs, gold ring and returned; but the second accused took the postela chain (mangalsutra) of the deceased and when PW-1 requested to return the same, he replied that the same would be returned when PW-1 pays the balance of the dowry. On 31.08.2001, PW-1 received a telephone call from the appellant to the effect that the deceased had set fire to herself and she was admitted in Srinivasa Hospital, Nagar Kurnool. In the hospital, PWs- 1 and 2 were told by the deceased that the appellant had beaten her and set her on fire after pouring kerosene. At about 10.35 a.m., PW-10, Sub- Inspector of Police visited the hospital and recorded the statement of the deceased marked as Exhibit-P5 and, on the basis of it, he registered Crime No. 104 of 2001 and he also sent Exhibit-P-6-requisition for JFCM for recording dying declaration. On 31.08.2001 itself, PW-13, JFCM, Nagar Kurnool visited the hospital and recorded the dying declaration marked as Exhibit-P10. Thereafter, the deceased was shifted to Osmania General Hospital. However, she

died on 09.09.2001. PW-10, who investigated the case, recorded the statement of PWs- 1 to 4 and others, visited the scene of offence, prepared scene observation report-Exhibit-P7, seized the kerosene tin(MO-1), the match box-(MO-2) and the burnt towel and the saree-(MOs-3 and 4, respectively) and got the scene of offence photographed. PW-11-Assistant Professor, Department of Medicine, Osmania Medical College, conducted the autopsy and opined that the cause of death was due to 70% burns on the body. The post-mortem report is marked as Exhibit-P8.

5. The accused took a defence of total denial.

6. On behalf of the prosecution, PWs-1 to 13 were examined, Exhibits-P1 to P10 were marked apart from MOs-1 to 4.

7. The High Court, after elaborately considering the evidence on record, maintained the conviction and sentence of the appellant. However, while maintaining the conviction of the second accused under Section 498A of IPC, the Court reduced the sentence to the period already undergone. There is no appeal by the second accused.

8. Having regard to the evidence on record, the High Court confirmed the finding of the Sessions Court that it is a case of homicide. For connecting the appellant solely to the homicide, mainly Exhibits-P5 and P10 " dying declarations were relied on in addition to the oral evidence of PWs-1 to 4.

9. There is no eye-witness. However, according to PW-4, the landlord, where the appellant and his deceased wife stayed as tenants in the adjacent room, has given evidence to the effect that on 31.08.2001, at about 08.00 or 08.30 a.m., he heard a galata (quarrel) at the residence of appellant and some time later, he saw the deceased coming out in flames. The deceased tried to douse the fire by pouring water on herself and the accused also did the same. When he reprimanded the appellant, the appellant brought an autorickshaw and shifted her to the hospital. PW-1-mother of the deceased, PW-2-son-in-law of PW-1, PW-3-neighbour of PW-2, all had visited the deceased in the hospital and, according to them, the deceased had told them that the appellant had set her on fire on account of non-payment of balance dowry. However, PW-9-Dr. Narhari, working in Government Hospital, where the deceased was taken immediately after the burns and who administered first aid to the deceased, had a version that on his inquiry from the deceased, she had told him that the injuries were self-inflicted.

Exhibit-P5 is the first dying declaration recorded by the Sub-Inspector of Police based on which the First Information Report was registered. According to her, on 30.08.2001 also, there was a quarrel between the appellant and the deceased regarding non-payment of the balance dowry. On 31.08.2001, at 08.30 a.m., when she tried to wake the appellant up, he beat her with chappal on her back and, immediately thereafter, he poured kerosene on her and set her on fire. Exhibit-P10 is the dying declaration recorded by JFCM, Nagar Kurnool at around 01.25 p.m. on 31.08.2001. With regard to the incident, there is no major inconsistency. Learned Counsel for the appellant submits that the case is entirely based on circumstantial evidence and there is no direct evidence to connect the appellant. It is not necessary to refer in extenso to this argument for the following reasons:

a. Exhibits-P5 and P10 " dying declarations are confidence bearing, truthful, consistent and credible. There was no room or chance for tutoring or prompting. Nor is there a case that it is the product of her imagination. Though no corroboration is necessary, yet, there is evidence of PWs-1 to 3 to whom also, the deceased is said to have narrated the incident. There is no serious attempt in defence to shake the credibility and reliability of the dying declarations.

b. We have seen the scene mehazar and photograph of the scene. It is a small rented accommodation and the picture of the kitchen shows that there was LPG gas connection and, therefore, it was not normally required to keep kerosene in such quantity.

c. The post-mortem report refers to the following injuries: 9. Injuries:

Ante mortem dermo epidermal burns present over lower half of face, neck, chest, upper third of abdomen, both upper extremities, both thighs, part of back of both legs and part of back of trunk amounting to 70% of total body surface area.

Skin peeled off at many places over burnt area and peeled off areas are red in colour.

Part of the burns are infected. (Emphasis supplied) It is very significant to note that the antemortem dermo epidermal burns are over lower half of face, neck

and then down the body to the legs. If one is to pour kerosene on oneself, it is the normal human conduct to pour it over the head, and in any case, not to pour it on the face sparing the head.

d. The indifferent conduct of the appellant, as spoken about by PW-4, in not taking prompt action to move the deceased to the hospital is also a situation to be taken note of.

e. There was nobody else in the house and, hence, it was for the appellant to offer explanation as to the cause of death. His theory of suicide, on the face of overwhelming evidence to the contrary, is not at all acceptable.

f. Only PW-9 has given a different version regarding the injury being self-inflicted. His version cannot be believed at all in the background of the overwhelming evidence we have discussed above and particularly in the background of the injuries noted in the post-mortem report. Learned Counsel for the appellant has also made a submission that the charge be reduced to one under Section 304 Part II. As rightly held by the Sessions Court and the High Court, setting fire on another person after pouring kerosene is an act likely to cause death of such person. It is a matter of simple and common knowledge that in the process, the victim is likely to suffer death on account of the burns. Therefore, the offence of murder is complete and, hence, we have no hesitation in our mind in reaffirming the conviction of the appellant under Section 302 of IPC.

Hence, we find no merit in the appeal and it is accordingly dismissed.

[1] (2002) 6 SCC 710