

SUPREME COURT OF INDIA

Tejram Patil

Vs.

State of Maharashtra

Crl.A.No.1330 of 2009

(Dipak Misra and Adarsh Kumar Goel JJ.)

26.02.2015

JUDGMENT

ADARSH KUMAR GOEL J.

1. This appeal has been preferred against the judgment and order dated 17th November, 2008 passed by the High Court of Judicature at Bombay, Nagpur Bench, in Criminal Appeal No.455 of 2003, upholding the conviction of the appellant under Section 302 IPC and sentence of rigorous imprisonment for life. The appellant has also been directed to pay fine of Rs.10,000/-, in default, to suffer RI for six months.

2. Deceased Savita was married to the appellant about three years prior to the date of the incident in question, i.e., on 28th March, 1999. One son and one daughter were born out of the wedlock. They were living in a rented house owned by PW1 Vimalbai.

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3. According to the prosecution, the deceased was subjected to cruelty and on the fateful day, the appellant returned home in drunken condition and started abusing the deceased and her mother Prabha Bai who had come on a visit to her daughter's house. Thereafter, the appellant poured kerosene on the deceased and set her on fire. Prabhabai and Vimalbai, PW1, tried to extinguish the fire and received burn injuries in the process. They were taken to Medical College and Hospital, Nagpur. The deceased made a dying declaration ('DD') (Exhibit 45) before PSI Sunil Eknadi Wanjari. She succumbed to her injuries at 6.25 A.M. on 29th March, 1999. Prabhabai also made a DD (Exhibit 43) before the PSI Bhila Narayan Bachao (PW5), on the basis of which FIR was lodged at Police Station Imambada. Rajiv Babarao Raut (PW3), Special Judicial Magistrate (SJM) also recorded DD of Prabhabai (Exhibit 41) at 9.30 A.M. on 29 th March, 1999. The said Magistrate

also recorded the statement of PW1 Vimalbai (Exhibit 29). Prabhabai died on 1st April, 1999 at 2.2.0 A.M. with 77% burn injuries. The dead bodies were subjected to post mortem.

4. After completion of investigation, the accused was sent up for trial. The prosecution examined PW1, Vimalbai, the land lady, PW2 Purshottam, father of the deceased, PW3 Page 2 Criminal Appeal No.1330 of 2009 Rajiv Babarao Raut, SJM, PW 4 PSI Sunil Eknadi Wanjari and PW5 PSI Bhila Narayan Bachao, apart from producing the DDs and other documents. The prosecution mainly relied upon DD made by Prabhabai duly recorded by the SJM, Rajiv Babarao Raut, Exhibit 41. As regards, the DD of deceased Savita Exhibit 45, the trial Court did not place reliance on the same pointing out the infirmities that the said DD did not bear signature or thumb mark of the deceased. There was no evidence of fitness of the deceased to make a statement.

5. As regards, the DD of Prabhabai, the objection as to its admissibility, in so far as it related to the cause of death of the deceased Savita, was overruled. This question will be considered in a later part of this order. To complete narration of facts, the content of the said declaration may be noted, which is as follows :

“I had gone to the house of my daughter Savita casually. The incident had taken place at 8.30 p.m. The husband of Savita (Tejram) accused returned to the house drunk. Tejram picked up quarrel with Savita. Then Tejram poured kerosene on the person of Savita and ignited match stick and set her ablaze. I and landlady Vimalbai (P.W.1) rushed to save Savita. However, fire flared up. I tried to catch Savita but got burnt. The neighbour took us to the hospital.” Page 3 Criminal Appeal No.1330 of 2009 The above statement is identical to the statement (Exhibit 43) recorded by PW5 PSI Bhila Narayan Bachao. It may be noted here that the DD Exhibit 41 recorded by the Magistrate carried certification of the Doctor about the fitness of the declarant to make the statement.

6. The stand of the accused in his statement under Section 313 was that the deceased Savita committed suicide by pouring kerosene on herself when the accused failed to meet her demand to pay her Rs.200/- for domestic expenses.

7. The trial Court held the case of the prosecution proved mainly by relying on DDs Exhibits 41 and 43 made by deceased Prabhabai. The said DDs were held to be admissible and genuine.

8. On appeal, the High Court affirmed the conviction and sentence of the appellant but on a different basis. The High Court held the DDs Exhibits 41 and 43 to be inadmissible for cause of death of Savita as the said statements were made by deceased Prabhabai and could be relevant only for the cause of death of Prabhabai.

However, the DD Exhibit 45 made by Savita which was not accepted by the trial Court, was accepted by the High Court. It was held that since Page 4 Criminal Appeal No.1330 of 2009 Savita had 100 per cent burn injuries, there was urgency for PSI Sunil Eknadi Wanjari PW4 to record her statement and in such circumstances failure to obtain medical evidence or to wait for the Magistrate was not a fetter to the reliability of the said DD.

9. The High Court held that there are following important aspects of the case:

“(a) presence of appellant, Prabhabai (mother of deceased) as well as Vimal (land lady of deceased) on the spot at the time of incident.

(b) Similarly, Savita, Prabhabai, Vimal sustained burn injuries and were admitted in the hospital is also not disputed.

(c) There is absolutely no evidence on record to show that Savita was either fed up with her life or was frustrated and therefore, wanted to end her life.

(d) Similarly, there is nothing on record to show that Savita had any reason to end her life.”

10. We have heard learned counsel for the parties.

11. Learned counsel for the appellant mainly submitted that DD Exhibit 45 was rightly discarded by the trial Court and has been wrongly relied upon by the High court as the sole basis for conviction of the appellant. He further submitted that DDs Exhibits 41 and 43 made by Prabhabai are not admissible in evidence as rightly held by the High Page 5 Criminal Appeal No.1330 of 2009 Court. He thus, concluded that there was no legal evidence in support of conviction of the appellant.

12. On the other hand, learned counsel for the State supported the judgment of the courts below. According to him, DD made by deceased Savita as well as DDs made by Prabhabai were admissible in evidence and were reliable. He further submitted that the incident has been admitted by the appellant and his only defence was that the deceased Savita committed suicide by pouring kerosene on herself which has been found to be false by both the courts below. Thus, the circumstantial evidence of the deceased being present at the place of occurrence and the death being not suicidal rule out the chance of the appellant being innocent. The circumstantial evidence itself proves the guilt of the appellant.

13. We have given our anxious consideration to the rival submissions and perused the evidence on record.

14. The decision of this appeal will rest on the answers to the following two questions :

(i) Reliability of DD Exhibit 45 recorded by PSI Sunil Eknadi Wanjari PW 4 made by deceased Savita;

(ii) Admissibility and reliability of DDs made by Prabhabai recorded by SJM, Rajiv Babarao Raut Exhibit 41) and PSI Bhila Narayan Bachao (Exhibit 43).

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15. As regards the reliability of DD Exhibit 45, we find merit in the contention of learned counsel for the appellant. We are of the view that the trial Court was justified in discarding the said piece of evidence. Undoubtedly, as held by the High Court relying on judgment of this Court in *Laxman vs. State of Maharashtra*¹ that even in absence of certification by the Doctor as to fitness of mind of the declarant and even if the DD is recorded by the Police Officer, the same can be relied upon. However, the Court must be satisfied that the deceased was in a fit mental condition to make the DD and that the statement was faithfully recorded and was otherwise reliable. In the present case, it is difficult to record such satisfaction. There is no material for the Court being satisfied that the deceased was in fit condition to make the declaration. The deceased was in the hospital at the time of her alleged statement but no effort was made by the PSI to ascertain her medical condition or to certify that he had satisfied himself about the fitness of the declarant. The DD does not bear the signature or thumb mark of the deceased. The deceased had sustained 100 per cent burns and succumbed to her injuries on 29 March, 1999 at 6.25 a.m. as already 1 (2002) 6 SCC 710 Page 7 Criminal Appeal No.1330 of 2009 noted. The view taken by the High Court that in the peculiarity of facts, authenticity of DD could be accepted, in our opinion, is not sound.

16. Coming now to the second question of admissibility and reliability of DDs Exhibits 41 and 43 it will be necessary to refer to the text of Section 32(1) of the Evidence Act, which is as follows :

“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 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.

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 added)

17. A bare perusal of the section shows :

(i) Statement should be of a person who is dead/cannot be found/has become incapable of giving evidence etc;

(ii) It should relate to the relevant facts; and Page 8 Criminal Appeal No.1330 of 2009

(iii) It should relate to cause of ‘his death’ or circumstances of the transaction which resulted in ‘his death’, in cases in which the cause of that person’s death comes into question.

18. In the present case, we are concerned with Point (iii) as we are concerned with the question whether statement of Prabhabei is relevant for determining cause of death of Savita. In other words, when charge is of murder of Savita, whether cause of death of Prabhabei which is integral part of the incident can also be held to be in question.

19. On a plain reading, the statement is admissible about the cause of death or the circumstances of the transaction which resulted in the death of the person making the statement. Question is what happens when two deaths have taken place in the same transaction and circumstances of the transaction resulting in one death is closely interconnected with the other death. Admittedly, the DD of Prabhabei is admissible as to cause of her death as well as the circumstances of the transaction which resulted in her death. Such statement may not by itself be admissible to determine the cause of death of anyone other than the person making the statement. However, when the circumstances of the transaction which resulted in death of Page 9 Criminal Appeal No.1330 of 2009 the person making the statement as well as death of any other person are part of the same transaction, the same will be relevant also about the cause of death of such other person.

20. Expressions “Relevant” and “facts in issue” are defined in the Evidence Act as follows:

"Relevant" - One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

"Facts in issue" -The expression "facts in issue" means and includes--any fact from which, either by itself or in connection with other facts, the existence, nonexistence, nature or extent of any right, liability, or disability asserted or denied in any suit or proceeding, necessarily follows.

Section 6 is as follows :

“6. Relevancy of facts forming part of same transaction - Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations xxxxxxxx”

21. Thus, when a dying declaration relating to circumstances of the transaction which resulted in death of a person making the declaration are integral part of circumstances resulting in death of any other person, such Page 10 Criminal Appeal No.1330 of 2009 dying declaration has relevance for death of such other person also.

22. We may now refer to the decisions dealing with the said legal issue. In *Kashinath Tukaram Jadhav vs. State of Maharashtra*, a Division Bench of the Bombay High Court held the same view relying upon the judgment of Travancore-Cochin High Court, in *Lukka Ulahannen vs. Travancore-Cochin State* (AIR 1955 Trav-Co 104) as follows :

“The view that the statement of one dead person is not a relevant fact with respect to the question about the death of another person or with respect to the causing of hurt to a third is too narrow to be accepted. To exclude from the evidence statements made by a deceased person as to incidents which occurred during the course of the transaction which resulted in his death statements other than those relating to the cause of his death, would be to import a limitation to the words used in the section which their natural meaning does not warrant. When a limitation like that is intended, the Legislature specially provides for it.” In doing so, the High Court also relied upon an early Madras Judgment in *Re P. Subbu Thevan* [2 Weir 750 (B)] and Judgment of Rangoon High Court in *Nga His Din vs. Emperor* (AIR 1936 Rang 187) but dissented from the view taken by the Allahabad High Court in *Kunwarpal Singh vs. Emperor* (AIR 1948 All 170) . The Bombay High Court in th 1984 Crl. L.J. 1447 Page 11 Criminal Appeal No.1330 of 2009 that case dealt with death of two persons in the same transaction. The person making the DD was stabbed while saving the other person who was stabbed. Such DD was held to be admissible for both the deaths. The DD and discussion of the Court in the said judgment are as follows :

“27. The relevant part of the dying declaration of Tatya read:

“On Sunday, the 30 July, 1978, at about 1.00 p.m. myself and Shri Khanna were standing near the flour mill, in Tagore Nagar, Group No.7. One Kashya Jadhav came there and called us. He asked whether we were searching him for assaulting. Immediately thereafter, he took out one open knife and stabbed Khanna on his chest twice. When I tried to save Khanna, Kashya stabbed me on my chest.

28. A reading of the declaration shows that it would become unintelligible and present a distorted picture if the narration regarding stabbing of Khanna is excluded therefrom.

Why did Kashya stab Tatya? It is because Tatya ran to the rescue of Khanna who was being stabbed Kashya. By excluding the narration regarding Khanna, the declaration may give an impression that Kashya came to the spot and straightway lunged towards Tatya and stabbed him – which is not what the declarant states. Right from the moment Kashya arrived at the crossing of the roads where Nana and Khanna were standing till the stabbing of Nana formed an unbroken chain of events constituting one transaction. Hence, the narration of Nana regarding the manner in which Kashya stabbed Khanna would also fall within the meaning of the phrase “any of the circumstances of the transaction” contained in sub-section (1) of S.32 of the Evidence Act. An errant bus-driven ploughing his bus into a crowd of waiting commuters; a rogue pachyderm running amok from captivity trampling the onlookers; a racist spraying bullets on the foci of his hatred – will not the Page 12 Criminal Appeal No.1330 of 2009 last of the survivors of the rampage be able to describe how others met their deaths before the avalanche hit him?

23. In *Ratan Gond vs. State of Bihar* two young girls Baisakhi and Aghani, aged 9 years and 5 years respectively were killed. They had gone to the jungle at a short distance from their village. Their mother Jatri had also gone to the jungle. When Jatri came back she found Aghani alone in the house. Aghani gave a statement to her mother about Baisakhi and since she died, the question was whether her statement was admissible about the cause of death of Baisakhi. It may be mentioned that Baisakhi had not returned to her house and her dead body was found on the next day. The question before the Court was whether the statement of Aghani was admissible about the cause of death of Baisakhi, the Court held :

“In the case before us, the statements made by Aghani do not relate to the cause of her death or to any of the circumstances relating to her death; on the contrary, the statements relate to the death of her sister. We are, therefore, of the opinion that the statements do not come within Section 32(1) of the Evidence Act and, indeed, Mr. Dhebar appearing on behalf of the State, has conceded that Section 32(1) does not apply to the statements of Aghani.” It is clear from the above judgment that it was

not a case where the transaction in which the person making the statement was the same as in the present case. AIR 1959 SC 18 = 1959 SCR 1336 Page 13 Criminal Appeal No.1330 of 2009 statement and the other deceased died was the same as in the present case.

24. The matter was again considered in *Sharad Birdhichand Sarda vs. State of Maharashtra*. It was observed :

“10.Coming now to the question of interpretation of Section 32(1) of The Evidence Act, this Court in the case of *Ratan Gond v. State of Bihar* (1959 SCR 1336 : AIR 1959 SC 18 : 1959 Cri LJ 108), S.K. Das, J. made the following observations:

The only relevant clause of Section 32 which may be said to have any bearing is clause (1) which relates to statements made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death. In the case before us, the statements made by Aghani do not relate to the cause of her death or to any of the circumstances relating to her death; on the contrary, the statements relate to the death of her sister.

In the *Law of Evidence* by Woodroffe & Ameer Ali, (Vol. II) the authors have collected all the cases at one place and indicated their conclusions thus:

To sum up, the test of the relevancy of a statement under Section 32(1), is not what the final finding in the case is but whether the cause of the death of the person making the statement comes into question in the case. The expression “any of the circumstances of the transaction which resulted in his death” is wider in scope than the expression “the cause of his death”; in other words, clause (1) of Section 32 refers to two kinds of statements: (1) statement made by a person as to the cause of his death, and (2) the statement made by a person as to any of the circumstances of the transaction which resulted in his death.

2 (1984) 4 SCC 116 Page 14 Criminal Appeal No.1330 of 2009 The words 'resulted in his death' do not mean 'caused his death'. Thus it is well settled that declarations are admissible only insofar as they point directly to the fact constituting the *res gestae* of the homicide; that is to say, to the act of killing and to the circumstances immediately attendant thereon, like threats and difficulties, acts, declarations and incidents, which constitute or accompany and explain the fact or transaction in issue. They are admissible for or against either party, as forming parts of the *res gestae*....."

11. The leading decision on this question, which has been endorsed by this Court, is the case of *Pakala Narayana Swami v. Emperor* (AIR 1939 PC 47 : 66 IA 66 : 180 IC 1) where Lord Atkin has laid down the following tests:

It has been suggested that the statement must be made after the transaction has taken place, that the person making it must be at any rate near death, that the 'circumstances' can only include the acts done when and where the death was caused. Their Lordships are of opinion that the natural meaning of the words used does not convey any of these limitations. The statement may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed. The circumstances must be circumstances of the transaction: general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible..... "Circumstances of the transaction" is a phrase no doubt that conveys some limitations. It is not as broad as the analogous use in "circumstantial evidence" which includes evidence of all relevant facts. It is on the other hand narrower than "res gestae".

Circumstances must have some proximate relation to the actual occurrence:..... It will be observed that "the circumstances" are of the transaction which resulted in the death of the declarant. These principles were followed and fully endorsed by a decision of this Court in Shiv Kumar v. State of Uttar Pradesh (Cri. Appeal Page 15 Criminal Appeal No.1330 of 2009 No.55 of 1966, decided on July 29, 1966) where the following observations were made:

It is clear that if the statement of the deceased is to be admissible under this section it must be a statement relating to the circumstances of the transaction resulting in his death. The statement may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed,..... A necessary condition of admissibility under the section is that the circumstance must have some proximate relation to the actual occurrence..... The phrase "circumstances of the transaction" is a phrase that no doubt conveys some limitations. It is not as broad as the analogous use in "circumstantial evidence" which includes evidence of all relevant facts. It is on the other hand narrower than "res gestae" (See Pakala Narayana Swami v. Emperor)."

25. It is thus clear that the DD is admissible not only in relation to the cause of death of the person making the statement and as to circumstances of the transaction which resulted in his death, if the circumstances of the said transaction relate to death of another person, the statement cannot be held to be inadmissible when circumstances of "his" death are integrally connected to the circumstances of death of such other person.

26. In the present case, the statement of pouring of kerosene on Savita, intervention of Prabhabai in the process and her receiving burn injuries resulting in her death

are integral part of the same transaction. Thus, the statement which relates to circumstances of the transaction resulting Page 16 Criminal Appeal No.1330 of 2009 in her death being admissible, it can be relied upon to show as to how death of Savita took place. The said statement is also corroborated by the admission of the accused himself to the extent that the death of Savita was by burning and the deceased Prabhabei received the burn injuries in the same incident. Though, the version of the accused that it was suicide, the same has been rightly found to be false.

27. In these circumstances, the death of Savita is proved beyond reasonable doubt to be homicidal death by burning and by pouring of kerosene and setting her on fire by the accused. This stands established by the statement of Prabhabei and the attendant circumstances. The said statement was duly recorded by the Magistrate and carries an endorsement by the doctor about her consciousness and fitness to make a statement. There is no reason for not accepting the authenticity of the version given in the said DD.

28. Accordingly, we hold that the DD made by Prabhabei was admissible as to the circumstances of the transaction which included the circumstance of pouring of kerosene and Page 17 Criminal Appeal No.1330 of 2009 lighting of fire by the accused resulting in death of the deceased.

29. As a result of the above discussion, we hold that the case of the prosecution against the appellant is proved beyond reasonable doubt. No interference is called for with his conviction and sentence.

The appeal is accordingly dismissed.