

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. Appeal No. 357/2004**

% Date of Order : February 17, 2009

GOVARDHAN DASS Appellant
Through : Mr. Mukesh Jain, Advocate

VERSUS

THE STATE (G. N.C.T. OF DELHI) Respondent
Through : Mr. Pawan Sharma, APP

CORAM :-

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not? Yes
- (3) Whether the judgment should be reported in the Digest ? Yes

PRADEEP NANDRAJOG, J.(Oral)

1. Heard learned counsel for the parties.
2. The question which arises for consideration in the instant appeal is, whether the learned trial judge was justified in convicting the appellant on the basis of two statements made by the deceased Meera Devi (wife of the appellant), being Ex.PW-27/B recorded by the Investigating Officer and Ex.PW-28/A recorded by Sh.Kamlesh Kumar, Metropolitan Magistrate, Delhi.

3. We note that it is not in dispute that Meera Devi, wife of the appellant, was admitted in a burnt condition at Deen Dayal Upadhaya Hospital at 6.25 AM on 8.4.1993. She was brought by the personnel of the fire services Govt. of NCT of Delhi. In the MLC, Ex.PW22/A, while recording the history of the burns it has been recorded "*Smell of kerosene oil present*". We note that the appellant died the next day i.e. on 9.4.1993 at around 1.30 PM.

4. On the MLC, at the place Mark-C, an endorsement has been made by Dr.Amardeep Singh that the patient was fit for statement. We note that after obtaining said certification from Dr.Amardeep Singh, the investigating officer SI Ram Singh PW-27, has recorded the statement of the deceased, as per which she informed him that she had not taken food since night and that her husband, Govardhan, asked her at about 5.00 AM why was she not responding to him in spite of his overtures. That he threatened her that he would implicate her family. That her husband set her on fire after pouring kerosene oil on her. At the first instance, he poured kerosene oil on her feet. That she had four children and was married 17-18 years ago. That her elder daughter was aged 15 years. That under influence of alcohol, her husband used to abuse her and used to beat her. That her husband poured kerosene

oil on her and set her on fire to kill her.

5. On the said statement, vide Ex.PW-21/A, Dr.Tarun Dubey has made an endorsement certifying that the patient Meera Devi is fit for statement.

6. The statement Ex.PW-28/A is in a question answer form and is preceded by a note in the form of a recital by Sh.Kamlesh Kumar of his having reached the hospital where Meera Devi was found admitted in Ward No. 2 and was lying in bed No. 24. That Dr.Tarun Dubey was present and certified the patient fit for statement. That Dr.Dubey talked to the patient before certifying her fit for statement. That Sh.Kamlesh Kumar had asked certain questions to Meera Devi as to who brought her to the hospital and who all had remained in attendance. It has been recorded that Meera Devi told Sh.Kamlesh Kumar that her Phoofa (uncle) and her mother-in-law remained with her as attendants. Satisfying himself that Meera Devi was understanding what was being talked to her, Sh.Kamlesh Kumar, Metropolitan Magistrate, Delhi has proceeded to record the statement in question answer form.

7. Briefly noted, to the question as to what had happened, Meera Devi responded that yesterday at around 5.00 in the morning she and her husband had a quarrel. To

the question as to when did the quarrel commence she responded that the quarrel commenced at 1 in the night. When questioned as to what triggered the quarrel, she responded that her husband told her to sleep with him and she told him that their daughters had grown up and were awake. She went on to state that the entire night her husband kept on evidencing a desire to sleep with her and she refused to do so and at 5 AM in the morning he picked up a can containing kerosene oil and poured the same on her and set her on fire. She went on to state that thereafter, when she raised a hue and cry, the family members awoke and at that time, her husband made an attempt to stamp out the fire. To a question, whether quarreling was a usual activity in the house, she responded that everyday Govardhan used to drink and fight with her.

8. After the statement of Meera Devi was recorded, the thumb impression of her right thumb was obtained and an endorsement Ex.PW-28/B was made by Sh.Kamlesh Kumar certifying that what he had recorded was a true and complete account of the statement made by Meera Devi who was identified by the Investigating Officer SI Ram Singh and that Meera Devi was certified fit for statement by Dr. Tarun Dubey.

9. The daughters of the appellant and the other

family members deposed in court that Govardhan was sleeping in the room of his mother and not with his wife. That Meera Devi was sleeping in a room with her daughters and that Meera Devi attempted to commit suicide by pouring kerosene oil on herself and thereafter set herself on fire.

10. The learned trial judge has disbelieved the version of the family members and has held that there was no reason not to believe the dying declaration of the deceased; specifically noting that the dying declaration was recorded before the Metropolitan Magistrate.

11. We note that Sh.Kamlesh Kumar, Metropolitan Magistrate, who recorded the dying declaration Ex. PW-28/A of the deceased appeared as PW-28 and deposed of having visited the hospital and having obtained a certification from the doctor on duty i.e. Dr. Tarun Dubey that Meera Devi was fit for making a statement. He deposed that he truthfully recorded the questions and the answers thereto as per Ex.PW-28/A. He deposed that the certification by the doctor Ex.PW-28/B was in his presence.

12. In cross-examination he deposed that he went to the hospital on receiving telephonic instructions. He deposed that he did not go through the medical record case sheet of the injured to satisfy himself regarding fitness of the patient.

He clarified that he did not do so because doctor had certified the patient as being fit for statement. He denied the suggestion that the patient was not fit for statement.

13. When examined under Section 313 Cr.P.C. the appellant stated that his wife was working as a domestic help and had wanted her daughters to accompany her when she went to work as a domestic help. He had objected to the same. That his wife was of quarrelsome nature and she picked up a quarrel and threatened that she would destroy him and his children and thereafter poured kerosene on herself and ended her life.

14. At the hearing today, learned counsel for the appellant draws our attention to the MLC Ex.PW-22/A of the deceased wherein the doctor on duty has recorded that the pulse was not recordable. The patient was dehydrated and was irritable. Further, the patient had burns all over the body except scalp. Learned counsel urges that the same shows that Meera Devi, whose pulse was not recordable and was not oriented could not be fit for making a statement. Counsel urges that the fact that the patient died the next day at around 1.45 PM shows that Meera Devi was neither fit for making a statement to the Investigating Officer nor to the Metropolitan Magistrate. Learned counsel highlights, that as

recorded in Ex.PW-28/A, the learned Metropolitan Magistrate recorded the statement of Meera Devi at 12.10 in the afternoon and within an hour thereof Meera Devi died.

15. With reference to the submissions made pertaining to the MLC Ex.PW-22/A of the deceased suffice would it be to record that reference made by the learned counsel for the appellant pertains to what has been recorded by Dr. Jitender Singh, under the Heading 'surgery note'. We note that the patient i.e. Meera Devi was initially examined by Dr. Amandeep Singh who recorded the MLC and that later on Dr. Jitender Singh recorded further condition as aforementioned much after Meera Devi was admitted. We further note that when the Investigating Officer submitted the application for recording the statement of the patient, Dr. Amardeep Singh has made an endorsement on the MLC that the patient was fit for statement. Meaning thereby, that the condition of the patient deteriorated sometimes after she was admitted to the hospital, for the reason at the time she was admitted and examined the doctor has recorded that the patient was conscious and was responding to verbal commands.

16. We are satisfied that when the Investigating Officer recorded the statement of the deceased, she was fit for statement.

17. Pertaining to the issue whether the patient was fit for statement at 12.10 noon the next date when Sh.Kamlesh Kumar recorded her statement Ex. PW-28/A; as noted above, Sh.Kamlesh Kumar was working as a Metropolitan Magistrate in Delhi. He was fully conscious of the procedures to be followed. Dr.Tarun Dubey, the doctor on duty on 9.4.1993 has made an endorsement Ex.PW-21/A on the sheet in which Sh.Kamlesh Kumar has recorded the statement of Meera Devi; endorsement being to the effect that the patient Meera Devi is fit for statement.

18. We see no reason why Sh.Kamlesh Kumar would collude with Dr.Tarun Dubey to obtain a false certification that Meera Devi was fit for statement. We see no reason for Sh.Kamlesh Kumar, the learned Metropolitan Magistrate, to cook up a false statement made by Meera Devi.

19. It is true that Meera Devi died within an hour of her statement Ex.PW-28/A being recorded, but that by itself would not mean that an hour prior, she was not fit for making a statement.

20. With the advancement in medical sciences; life saving drugs being discovered, it is an everyday state of affairs seen by us that patients are in a position to understand and speak till their very last moment of life.

21. From the questions answered by Meera Devi as recorded in Ex.PW-28/A it is apparent that Meera Devi comprehended what was being put to her and was answering the same coherently.

22. What triggered the incident, is to be found in the statement of Meera Devi which shows the truth of what happened and conforms with human behaviour.

23. As noted above, she had stated that her husband was wanting to sleep with her. It is obvious that she was telling that her husband wanting to enjoy her body. That she told him that the daughters were grown up and awake. It is obvious that she was telling her husband not to indulge in the usual activities when the daughters were awake. The carnal instinct of the appellant kept him awake the whole night. He kept on persuading his wife, till the frustration reached a crescendo at 5.00 AM in the morning. To teach his wife a lesson, he poured kerosene oil on her and set her on fire.

24. It is not possible for us to believe that the appellant was sleeping in a different room where his mother was sleeping. It is unnatural for a husband to be sleeping with her mother instead of his wife. The natural conduct would be for the children to be sleeping with their grandmother.

25. Besides, if Meera Devi had to commit suicide, 5 AM

in the morning when everybody was present in the house, would be a most inopportune moment for Meera Devi to succeed in her mission. We note that apart from the daughters of the appellant, his mother and his brother and the family members of the brother were also living in the same house. If Meera Devi had wanted to commit suicide, she would have taken the precaution to be alone in a room in a house, could be the toilet, where nobody could rescue her and she would succeed in her mission. The fact that Meera Devi has been burnt in the living room in the house, which we note also was doubling as the kitchen of the house, shows that it was not Meera Devi who poured kerosene on herself and then set herself on fire.

26. We see no reason to hold that Meera Devi was influenced by anybody to make the statements as noted above.

27. It is urged by learned counsel for the appellant that even the hands of the appellant received burn injuries and this justifies his defence that he went to rescue his wife when he saw that she had set herself on fire. Learned counsel draws our attention to the statement of the appellant to this effect when he was examined under Section 313 Cr.P.C.

28. The answer is to be found in a question to Meera

Devi by the learned Metropolitan Magistrate and her answer thereto. After Meera Devi told the Metropolitan Magistrate that the appellant picked up a can containing kerosene and after spraying the same on her, set her on fire; to the next question, as to what happened thereafter, she responded that she screamed; family members got up, her Devar (brother of the appellant), her mother-in-law and her children came. To the next question as to what happened thereafter, she responded "*Phir Govardhan Aag Bujhane Laga*". It is apparent that the superficial burn injuries on the hands of the appellant were a result of events as disclosed by Meera Devi in her statement Ex.PW-28/A.

29. Some case law is cited and needs to be dealt with.

30. Learned counsel for the appellant has cited a decision of the Supreme Court reported as JT 2007 (9) SC 342 *Shaikah Bakshu and Ors. v. State of Maharashtra*. Learned counsel urges that the said decision shows that the deceased Rubina married about 8 days prior to the alleged incident was found to be tutored, evidenced by the nature of her dying declaration. Drawing a parallel, learned counsel states that in the instant case, the Phoofa of Meera Devi, as told by her to Sh.Kamlesh Kumar the learned Metropolitan Magistrate, was with her and thus there is every possibility that her Phoofa

had tutored her.

31. In Shaikah Bakshu case (supra) it has been noted that the deceased had incorrectly described the place of the occurrence and with reference to the testimony of the police inspector and the place of the occurrence, the Supreme Court found that there were glaring discrepancies in the dying declaration of the deceased vis-a-vis the place of occurrence. Thus, the Supreme Court held that it was not safe to rely upon such a dying declaration.

32. Another decision cited is reported as JT 2007 (3) SC 602 Mohan Lal and Ors. v. State of Haryana. The said decision shows that the deceased had imputed the motive for her in laws to burn her by disclosing in her dying declaration that she had a boil under her armpit and because of the same she was not in a position to do household work and that her father-in-law had got enraged and wanted her to show the place of the boil on her body and when she did not do so, she was set on fire. The Supreme Court noted that the post-mortem report of the deceased did not show the presence of any boil or pustule in the armpit of the deceased as told by her. Thus, the Supreme Court discarded the dying declaration vis-a-vis the cause which triggered the act as disclosed by the deceased as the same was not found to be true.

33. The third decision cited is report as (2006) 3 SCC 161 P.Mani v. State of Tamilnadu.

34. Suffice would it be to state that the said decision clarifies the law, that to be acted upon, a dying declaration must be wholly reliable and in case of suspicion, the court should seek corroboration. It was held that if the dying declaration is not wholly true, it can be treated only as a piece of evidence, but unless corroborated in material particulars, a conviction cannot be based solely upon it.

35. The law relating to a dying declaration may be stated thus: a dying declaration is a piece of evidence. Its worth has to be considered as any other evidence. It stands on a slightly higher footing because law believes that he/she who is going to meet the Almighty would not be telling a lie. But, if there is evidence which discredits statements made in a dying declaration or casts a doubt on the authenticity of the statements made in the dying declaration or where there is evidence that the maker of the dying declaration has a motive to falsely implicate the person against whom accusations are made or that the maker of the dying declaration was tutored, in said circumstances alone the court would look into other evidence to corroborate a dying declaration.

36. Each case has its own story to tell. No decision can thus be a precedent to be followed.

37. In the instant case what has triggered the act of the appellant has been disclosed by the deceased. Indeed, we find a nugget of truth in the statement of the deceased. The dying declaration is in question answer form which has been recorded by a Metropolitan Magistrate.

38. The theory of the deceased having committed suicide has been discarded by us on the reasoning hereinabove given. We need not reiterate.

39. Suffice would it be to record that the post-mortem report shows that the cause of death was a direct result of the deceased suffering hundred percent burn injuries.

40. We find no merit in the appeal. The appeal is dismissed.

(PRADEEP NANDRAJOG)
JUDGE

(ARUNA SURESH)
JUDGE

February 17, 2009
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