

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
&
HON'BLE SRI JUSTICE A. V. SESA SAI

CrI.A. No. 387 of 2011

JUDGMENT:- (per Hon'ble Sri Justice C. Praveen Kumar)

This Criminal Appeal is filed by the appellant-accused against the judgment dated 02-09-2010 delivered in Sessions Case No.614 of 2009 on the file of the Court of Sessions Judge, Mahabubnagar whereby the appellant was convicted for an offence punishable under Section 302 IPC and sentenced to undergo imprisonment for life and pay a fine of Rs.1,000/-, in default, to suffer simple imprisonment for three months.

The case of the prosecution in brief is that on 16.03.2009 at about 05:15 P.M., soon after receipt of information about the admission of Boya Manemma (deceased), who is the wife of the accused in the hospital, the Head Constable of Nawabpet Police Station, rushed to the burns ward of Government Hospital, Mahabubnagar and recorded the statement of the injured. In her statement the victim stated that, after her marriage with the accused, she gave birth to four daughters and one son, and right from the date of her marriage, her husband was quarelling and beating her indiscriminately. On the date of incident i.e.

14.03.2009, at about 10:00 P.M., the accused, after picking up a quarrel with her, beat her indiscriminately, poured kerosene, set fire to her by litting a match-stick and fled away. On hearing her cries, her co-sister – Boya Jayamma and her husband Boya Anjaneyulu came to her rescue, extinguished the flames and got her admitted in Government Hospital for treatment. Basing on her statement, the Sub-Inspector of Police, Hanwada Police Station, registered a case in Cr.No. 25 of 2009 against the accused for an offence punishable under Section 307 IPC. The statement of the victim was also recorded by the Judicial Magistrate of First Class, Jadcherla. During the course of investigation, the Sub-Inspector of Police, Hanwada Police Station also recorded the statement of the victim and arrested the accused on 17.03.2009. After her death, the Section of law was altered to 498-A and 302 IPC and the original F.I.R. was submitted to the Court. Thereafter, the Circle Inspector of police, Mahabubnagar Rural, took up further investigation, recorded the statements of PWs.2 to 5, held inquest over the dead body of the deceased in the presence of PW8 and another, sent the dead body for post-mortem examination and after completing investigation filed charge sheet.

To the charge framed under Sections 302 and 498-A IPC for causing the death of his wife - Boya Manemma, the accused pleaded not guilty and claimed to be tried.

To substantiate their case, the prosecution examined PWs. 1 to 13 and got marked Exs.P1 to P14. No oral or documentary evidence was adduced on behalf of the accused, in support of his defence.

After the closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him in the evidence of the prosecution witnesses, to which he denied. On appreciation of the entire evidence on record, the learned Session Judge convicted the accused, as referred to above.

PW1 is the younger brother-in-law, PWs.2 and 3 are the daughters, PW4 is the younger sister and PW5 is the mother of the deceased. PW6 is the panchayatdar for observation panchanama of scene of offence. PWs.7 and 8 are panchas for the inquest, held over the dead body of the deceased. Even though PWs.1 to 8 were examined as eye-witnesses to the incident, none of them supported the prosecution case, as such, they were declared hostile by the prosecution. Though they were cross-examined at length, nothing useful

was elicited by the prosecution, except suggesting that what they have stated before the police in their earlier statements is true and correct. Even according to the appellant, the entire case rests on the dying declaration recorded by PW9 - Judicial Magistrate of First Class.

Smt. M. Uma Devi, learned counsel for the appellant-accused would submit that since the manner of recording the dying declaration is contrary to Rule 33 of Criminal Rules of Practice and Circular Orders, 1990, no credence can be given to it.

The learned Public Prosecutor, while opposing the contention of the learned counsel for the appellant, submits that there is an endorsement of the medical officer on Ex.P6 certifying the fitness of the victim, as such, the dying declaration cannot be brushed aside. In support of his contention, he has relied upon the judgment of the Supreme Court in Ramesh and Others v. State of Haryana¹ wherein it is held as under:-

“No doubt, the victim has been brought with 100% burn injuries. Notwithstanding, the doctor found that she was in a conscious state of mind and was competent to give her statement. Thus, the Magistrate had taken due precautions and, in fact, Medical Officer remained present when the dying declaration was being recorded. Therefore, this dying declaration cannot be discarded

¹ MANU/SC/1517/2016

merely going by the extent of burns with which she was suffering, particularly, when the defence has not been able to elicit anything from the cross-examination of the doctor that her mental faculties had totally impaired rendering her incapable of giving a statement.

Keeping in view the aforesaid considerations, we feel that High Court rightly observed that the manner in which the trial court proceeded with the matter was legally unsustainable. It was necessary for the trial court, in the first instance, to see as to whether due precautions were taken before recording the statement of the deceased, which became dying declaration as she died within few hours thereafter. In this context, what is relevant is that the moment the deceased was admitted in PGIMS, Rohtak, without any loss of time and immediately thereafter the Doctor at the said hospital sent the information to the police post about her admission in the hospital with burns. On receipt of that information, Sub-Inspector visited the hospital and collected Medical Report of the deceased. He immediately moved an application before the concerned Medical Officer seeking his opinion with regard to the fitness of the patient. On that application itself (Ex. PG), the Doctor made an endorsement (Ex. PG/ 1) that she was fit to make statement. Sub-Inspector did not record the statement of the deceased himself. Rather, he took due precaution by approaching the Chief Judicial Magistrate, Rohtak with an application (Ex. PH) requesting him to depute an officer to record the statement of the deceased. On this application, orders were passed (Ex. PH/ 1) directing Bhupinder Nath, Judicial Magistrate, First Class, Rohtak to go to the hospital and record the statement. Armed with this order, the Magistrate reached the hospital and recorded the statement of the deceased. This recording was done in the presence of the Doctor who again certified that she had given the statement in a fit state of mind.

On examination and analysis of the dying declaration in the aforesaid perspective, we do not find any reason to discard it

having regard to the legal position on the subject already noticed above by referring to relevant case law. It is trite that dying declaration is a substantive piece of evidence and can be made the basis of conviction once the Court is convinced that dying declaration is made voluntarily and is not influenced by any extraneous circumstances.

We find that it is becoming a common phenomenon, almost a regular feature, that in criminal cases witnesses turn hostile. There could be various reasons for this behaviour or attitude of the witnesses. It is possible that when the statements of such witnesses were recorded under [Section 161](#) of the Code of Criminal Procedure, 1973 by the police during investigation, the Investigating Officer forced them to make such statements and, therefore, they resiled therefrom while deposing in the Court and justifiably so. However, this is no longer the reason in most of the cases. This trend of witnesses turning hostile is due to various other factors. It may be fear of deposing against the accused/delinquent or political pressure or pressure of other family members or other such sociological factors. It is also possible that witnesses are corrupted with monetary considerations.

The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who has political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens it has to ensure that during a trial in Court the witness could safely depose truth without any fear of being haunted by those against whom he had deposed. Every State has a constitutional obligation and duty to protect the life and liberty of its citizens. That is the fundamental requirement for observance of the rule of law. There cannot be any deviation from this requirement because of any extraneous factors like, caste, creed, religion, political belief or ideology. Every State is supposed to know these fundamental requirements and this needs no retaliation.

We can only say this with regard to the criticism levelled against the State of Gujarat. Some legislative enactments like the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short the “TADA Act”) have taken note of the reluctance shown by witnesses to depose against people with muscle power, money power or political power which has become the order of the day. If ultimately truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense of making the proceedings before Courts mere mock trials as are usually seen in movies.”

In order to appreciate the contents of the dying declaration, it is useful to refer to it and also the evidence of PW9 who recorded the dying declaration. According to PW9, on 15.03.2009 at 12:20 A.M., on receiving requisition from the Government General Hospital, Mahabubnagar, she reached the hospital by 12:50 A.M. The duty doctor accompanied her to the burns ward and showed the patient to her. When PW9 enquired with the doctor about the fitness of the victim, he stated that the patient is conscious and coherent and fit to give her statement. After obtaining the said endorsement, she recorded the dying declaration. PW9 further deposed that after putting preliminary questions and after satisfying herself with regard to the mental condition of the patient, recorded the statement of the injured. Her evidence further discloses that except the duty doctor, no other person was present at the time of recording the dying declaration. A reading of the dying declaration –

Ex.P6, clearly shows that since the date of marriage, her husband was altercating and beating her regularly and on the date of the incident, as usual, he beat her, poured kerosene and set her ablaze. She categorically stated that her husband was responsible for the burn injuries. It was further stated that on the date of incident, except herself and her husband, no one else was present in the house. After the incident, her brother-in-law brought her to the hospital. An endorsement of the doctor with regard to the mental capacity of the patient was also obtained on the dying declaration.

The learned counsel for the appellant strenuously contends that the recording of the dying declaration was not in compliance with Rule 33 of the Civil Rules of Practice, as the Magistrate failed to enquire the mental capability of the injured in making the dying declaration. But a perusal of the dying declaration, which is marked as Ex.P6, would clearly indicate that there were two endorsements of the doctor on Ex.P6, with regard to mental condition of the deceased. One endorsement was made before the commencement of recording the dying declaration and another at the end of the dying declaration. The first endorsement on Ex.P6 was as under “the patient is conscious and coherent and able to

give rational answers” and the second endorsement states that “patient was conscious and coherent while giving the above statement”. Hence, it cannot be said that there was no compliance of Rule 33 of the Civil Rules of Practice.

Further, a faint attempt is being made by the learned counsel for the appellant, to show that the dying declaration was an outcome of tutoring the injured - deceased. To buttress her contention, she placed reliance on the answers given by PW2 – the daughter of the deceased to show that dying declaration was not due to tutoring. But it is to be noticed here that PW2 did not support the prosecution case and was treated hostile by the prosecution.

Having regard to the contents of dying declaration - Ex.P6, which inspire confidence in the mind of the Court, and in the light of the above legal position, we feel that there is no reason to disbelieve the dying declaration.

Hence, we see no reason to interfere with the findings recorded by the trial Court on both the counts.

Accordingly, the Criminal Appeal is dismissed confirming the conviction and sentence imposed on the appellant vide judgment dated 02.09.2010 delivered in S.C.No. 614 of 2009 on the file of the Court of the learned Sessions Judge, Mahabubnagar.

As a sequel, Miscellaneous Petitions, if any pending,
shall stand disposed of as infructuous.

C. PRAVEEN KUMAR, J

23.09.2017

bcj

A. V. SESA SAI, J

