

HONOURABLE SRI JUSTICE A. RAJASHEKER REDDY

AND

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL APPEAL No.807 OF 2011

JUDGMENT: (Per Honourable Sri Justice A.Shankar Narayana)

Challenging the conviction recorded under Section 235 (2) of the Code of Criminal Procedure, 1973 (for short 'the Code') for the charges under Sections 498-A and 302 IPC, the present appeal is preferred under Section 374(2) of the Code.

2. Learned Additional Sessions Judge, Hindupur, in Sessions Case No.373 of 2010 on his file having tried the accused for the charges convinced himself that the Prosecution could prove both the charges alleged against the appellant and thereby recorded the conviction believing the dying declarations occurring in the case and also to some extent the evidence let in by the Prosecution.

3. The brief facts, which are absolutely relevant for disposal of the present appeal, are as here under:

i) The appellant is none other than the husband of the deceased Parvathamma. PWs.1 and 2 are the junior paternal uncles of the deceased and PW.3 is wife of PW.2. Admittedly, the mother of the deceased (LW.1) could not be examined by the prosecution as there was evidence of PWs.1 to 3 to show that she became

mentally deteriorated after the death of her daughter due to burns caused by the appellant herein.

ii) The marriage between the appellant and the deceased had taken place about three years prior to the date of incident. The appellant was working as a lorry driver and he used to visit the house twice or thrice in a month and spend time and then again join duty. For Ugadi festival of 2010 year, the appellant came home on 15.03.2010 and joined the deceased. On 16.03.2010, he picked up a quarrel with the deceased suspecting her fidelity and beat her indiscriminately. It is also the prosecution case that soon after their marriage, he used to suspect the fidelity of the deceased. On 17.03.2010, at about 1.30 p.m., while the mother of the deceased was sitting at the door steps of their first room, the appellant alleged to have picked up quarrel with the deceased while she was at Kitchen and at that moment he grew wild against the deceased and with an intent to kill her, he picked up Kerosene Stove and poured Kerosene on her person and set ablaze her. Since she was unable to tolerate burns she raised loud cries saying that her husband was killing her by pouring Kerosene on her. The mother of the deceased who was sitting at door steps rushed to the spot to rescue her daughter during which time the appellant while trying to flee away pushed her aside and ran away. The mother of the deceased, somehow, put off the flames with the help of neighbours i.e. PW.4-M.Venkatamma and another.

iii) Later, on coming to know the incident PWs.1 to 3 rushed there and shifted the injured-Parvathamma to the Government Hospital, Hindupur in 108 ambulance, where, on requisition sent by the Medical Officer, the Judicial Magistrate of First Class, Hindupur, recorded the statement of the deceased which turned out to be a dying declaration later.

iv) The injured-Parvathamma on 23.03.2010 succumbed to injuries while undergoing treatment. On intimation as to her death taking place, the concerned Sub Inspector of Police altered the section of law from 498-A and 307 IPC to 302 IPC in place of Section 307 IPC and issued Express FIR once again to all concerned. Even prior there-to when the injured was admitted into the hospital, after the Magistrate recorded her statement, the Head Constable who received information about admission of injured Parvathamma with burns, reduced the statement of deceased into writing and basing on it, registered a crime for the offences punishable under Section 498-A and 307 IPC, earlier.

3. The investigation was taken up and the relevant witnesses were examined. The accused was arrested and after completion of investigation charge sheet was laid. After observing due formalities by the concerned Magistrate, the case was committed to the Court of Sessions and it was numbered as Sessions Case No.373 of 2010. On appearance of accused and after hearing learned Additional

Public Prosecutor and defence counsel, the accused was examined for the charges under Section 498A and 302 IPC and since he pleaded not guilty and claimed to be tried, the prosecution let in evidence by examining PWs.1 to 13 and exhibiting Exs.P-1 to P-12, besides marking Material Objects 1 and 2. MO.1 is half burnt saree and MO.2 is Kerosene Stove, which were collected at the place of occurrence in the presence of mediators.

4. So far as evidence let in by the Prosecution is concerned, PWs.1 to 3 are admittedly close relations of the deceased and PW.4 is the neighbour and she was intended to speak about her witnessing the accused while running away from the house of LW.1. Thus, she is a circumstantial witness to crucial link in the chain. PW.5 is the mediator for the observation mahazar of the scene of offence. PW.6 is the Inquest Mediator. Learned Magistrate was examined as PW.7 who recorded Ex.P-4-Dying Declaration. The Medical Officer who conducted Autopsy was examined as PW.8. The Doctor who treated the deceased after she was immediately admitted in the hospital was examined as PW.9 and was present at the time when PW.7 recorded dying declaration and certified that the deceased while giving statement was conscious and coherent to make statement and also at the time of making statement and he endorsed to that effect on the dying declaration which is marked as Ex.P-4. PW.11 is the Head Constable who reduced the statement as mentioned above, immediately after the

dying declaration was recorded by the learned Magistrate and that constituted basis for registering a crime punishable under Section 498-A and 307 IPC which was later altered to 302 IPC. Amongst the documents marked by the prosecution, Ex.P-4 constitutes the basis for prosecution case.

5. For corroboration, there are other statements constituting dying declarations. Altogether there are three different dying declarations, one in the form of statement given to PWs.1 to 3 by the deceased just immediately after taking place of incident when they enquired the deceased as to how she sustained injuries and what was the reason. The second is the dying declaration recorded by the learned Magistrate which is marked as Ex.P-4. The third dying declaration is in the form of Ex.P-9-the statement made by the deceased before PW.11. Thus, three types of dying declarations are occurring and the version spoken by the deceased in each of theses dying declarations is consistent and certainly inspires confidence. Admittedly, in the present case there are no eye witnesses. Only circumstantial witness who is the mother of the deceased cited as LW.1 was not examined for the aforesaid reasons. Therefore, precisely the entire case rests on dying declarations.

6. So far as, motive is concerned, for the accused to set deceased on fire so as to kill her was suspicion about her conduct or fidelity as the case may be as alleged by the prosecution.

7. Heard Ms.P.Suhasini, appointed by the Legal Services Committee (Legal Aid) to prosecute the present appeal and the learned Public Prosecutor for the State of Andhra Pradesh.

8. Learned Counsel for the appellant in an attempt to condemn the prosecution case submits that the evidence of PWs.1 to 3 cannot be relied upon for the reason that they are interrelated and interested. According to the learned counsel there is nothing in the evidence of PWs.1 to 3 as they are not direct witnesses even according to the prosecution case. So far as PW.4 is concerned, learned counsel submits that though, she was cited as circumstantial witness, she did not assert in her evidence that she found the accused running away from the house immediately after the incident. The said submission is certainly true. When examined, the evidence of PW.4, her evidence shows that because of the disputes between the accused and deceased, deceased sustained burns at the hands of accused. But, nowhere she stated that she did witness the incident.

9. Now the prosecution case requires examination in the light of dying declarations.

10. Learned counsel does not dispute about recording of dying declaration by PW.7 as in Ex.P-4 and does not point out anything in

the evidence of PW.7 and PW.10-the Medical Officer, who was present at the time when PW.7 recorded Ex.P-4.

11. However, the learned counsel places reliance in **Ganga Dass Alias Godha v. State of Haryana**¹. Basing on the said ruling, learned counsel submits that the present case is also one which falls within the purview of Section 304 Part II IPC and therefore requests to modify the conviction and sentence of imprisonment on those lines. The learned counsel also places reliance in **Dev Raj v. state of Punjab**² wherein it was also held that when death was not direct result of the injuries caused to the deceased during the occurrence and the injured died nearly 1 ½ months after the incident who was subjected to multiple surgeries and secondary haemorrhage resulting in death, it was a case where offence under Section 326 IPC would attract but not Section 302 IPC. We would like to examine it a little later after perusing the record in the light of submissions made by the Public Prosecutor and also on our independent analysis of the evidence on record.

12. Learned Public Prosecutor submits that the prosecution could prove the motive even from the evidence of PWs.1 to 3, besides the dying declarations reflecting the motive spoken to by the deceased in her dying declaration that being the husband of the accused always used to harass her suspecting her fidelity and that, that was

¹ 1994 Supp (1) Supreme Court Cases 534

² AIR 1992 Supreme Court 950

the reason why the accused went to the extreme in pouring Kerosene and setting her ablaze.

13. The next submission of the learned Public Prosecutor is that the dying declarations on record, more particularly, Ex.P-4 recorded by PW.7 would inspire confidence for the reason that every precaution was taken by the learned Magistrate as required by the relevant provisions of Criminal rules of Practice in recording Ex.P-4.

14. According to the learned Public Prosecutor Ex.P-4 is not the only dying declaration occurring on record, but Ex.P9-complaint statement of the deceased reduced into writing by PW.11 would also support Ex.P-4 besides the statements made to PWs.1 to 3 when they enquired her just immediately after taking place of the incident as to the cause of death. More pertinent submission of learned Public Prosecutor is that the dying declarations under Ex.P-4 and P-9 are so precise and short that always inspire confidence ruling out scope for any suspicion.

15. Now, advertng to the submission made by learned counsel for the appellant that the evidence of PWs.1 to 3 suffers from interestedness is concerned, certainly, though, they are related closely, but there is no rule of prudence that on mere ground of inter-relationship, to view their testimony as interested or suffers from interestedness to exclude from record. Therefore, that

submission in our view, is not worthy of acceptance. So far as the testimony of PW.4 is concerned she is a circumstantial witness witnessing the accused running away from the house of LW.1, just immediately after the taking place of incident and of course, she has not asserted the said fact in her evidence which is an incriminate circumstance, but, on that itself it cannot be said that the entire evidence is suspicious. At the most it can be construed as a minor discrepancy occurring in the prosecution case. The Public Prosecutor who conducted trial ought to have declared the witness hostile as she has not asserted her witnessing the accused running away from the house of LW.1 as pointed out by her in the statement made to police recorded under Section 161 of the Code touching that assertion and ought to have cross examined her which of course was not done by the prosecution.

16. Before adverting to as to appreciation of dying declarations when there are multiple declarations are occurring in the case at hand, it would be appropriate to refer to what has been ruled by the Honourable Apex Court. Certain cautions were given by the Honourable Apex Court in the rulings rendered by it. Now it is well settled that dying declarations constitute an important piece of evidence which if found veracious and voluntary by the Court could be the sole basis for conviction. But, the Honourable Apex Court in **Mukesh and Others v. State of NCT of Delhi and**

Others³ given a caution that while admitting the dying declarations, the Court must be vigilant towards the need for 'Compos Mentis Certificate' from a doctor as well as the absence of any kind of tutoring. The Honourable Apex Court extracted the law relating to dying declaration in paragraph No.173 referring to its earlier ruling in **Laxman v. State of Maharashtra**⁴.

“173. A dying declaration is an important piece of evidence which, if found veracious and voluntary by the court, could be the sole basis for conviction. If a dying declaration is found to be voluntary and made in fit mental condition, it can be relied upon even without any corroboration. However, the court, while admitting a dying declaration, must be vigilant towards the need for 'Compos Mentis Certificate' from a doctor as well as the absence of any kind of tutoring. In *Laxman v. State of Maharashtra* (2002) 6 SCC 710, the law relating to dying declaration was succinctly put in the following words:

3. ... 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

³ AIR 2017 SC 2161

⁴ (2002) 6 SCC 710

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.” ”

As regards admissibility of a dying declaration, the Hon'ble Supreme Court held in paragraph Nos.174, 175, 176, 177, 178 and 179 thus:

“174. The legal position regarding the admissibility of a dying declaration is settled by this Court in several judgments. This Court, in *Atbir v. Government of NCT of Delhi* (2010) 9 SCC 1, taking into consideration the earlier judgment of this Court in *Paniben v. State of Gujarat* (1992) 2 SCC 474 and another judgment of this Court in *Panneerselvam v. State of Tamil Nadu* (2008) 17 SCC 190, has exhaustively laid down the following guidelines with respect to the admissibility of dying declaration:

22. (i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.

(ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.

(iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

(iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

(v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.

(viii) Even if it is a brief statement, it is not to be discarded.

(ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.

(x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.

175. It is well settled that dying declaration can form the sole basis of conviction provided that it is free from infirmities and satisfies various other tests. In a case where there are more than one dying declaration, if some inconsistencies are noticed between one and the other, the court has to examine the nature of inconsistencies as to whether they are material or not. The court has to examine the contents of the dying declarations in the light of the various surrounding facts and circumstances. In *Shudhakar v. State of Madhya Pradesh* (2012) 7 SCC 569, this Court, after referring to the landmark decisions in *Laxman (supra)* and *Chirra Shivraj v. State of Andhra Pradesh* (2010) 14 SCC 444, has dealt with the issues arising out of multiple dying declarations and has gone to the extent of declining the first dying

declaration and accepting the subsequent dying declarations. The Court found that the first dying declaration was not voluntary and not made by free will of the deceased; and the second and third dying declarations were voluntary and duly corroborated by other prosecution witnesses and medical evidence. In the said case, the accused was married to the deceased whom he set ablaze by pouring kerosene in the matrimonial house itself. The smoke arising from the house attracted the neighbours who rushed the victim to the hospital where she recorded three statements before dying. In her first statement given to the Naib Tehsildar, she did not implicate her husband, but in the second and third statements, which were also recorded on the same day, she clearly stated that the accused poured kerosene on her and set her on fire. The accused was convicted Under Section 302 Indian Penal Code. In this regard, the Court made the following observations:

21. Having referred to the law relating to dying declaration, now we may examine the issue that in cases involving multiple dying declarations made by the deceased, which of the various dying declarations should be believed by the court and what are the principles governing such determination. This becomes important where the multiple dying declarations made by the deceased are either contradictory or are at variance with each other to a large extent. The test of common prudence would be to first examine which of the dying declarations is corroborated by other prosecution evidence. Further, the attendant circumstances, the condition of the deceased at the relevant time, the medical evidence, the voluntariness and genuineness of the statement made by the deceased, physical and mental fitness of the deceased and possibility of the deceased being tutored are some of the factors which would guide the exercise of judicial discretion by the court in such matters.

176. Recently, a two-Judge Bench of this Court in *Sandeep and Anr. v. State of Haryana* (2015) 11 SCC 154 : (2015) 2 SCR 1999 SC was faced with a similar situation where the first dying declaration given to a police officer was more elaborate and the subsequent dying declaration recorded by the Judicial Magistrate lacked certain information given earlier. After referring to the two dying declarations, this Court examined whether there was any inconsistency between the two dying declarations. After examining the contents of the two dying declarations, this Court held that there was no inconsistency between the two dying declarations and non-mention of certain features in the dying declaration recorded by the Judicial Magistrate does not make both the dying declarations incompatible.

177. In this regard, it will be useful to reproduce a passage from *Babulal and Ors. v. State of M.P.* (2003) 12 SCC 490 wherein the value of dying declaration in evidence has been stated:

7. ... A person who is facing imminent death, with even a shadow of continuing in this world practically non-existent, every motive of falsehood is obliterated. The mind gets altered by most powerful ethical reasons to speak only the truth. Great solemnity and sanctity is attached to the words of a dying person because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person. The maxim is "a man will not meet his Maker with a lie in his mouth" (*nemo moriturus praesumitur mentire*). Mathew Arnold said, "truth sits on the lips of a dying man". The general principle on which the species of evidence is admitted is that they are declarations 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 mind induced by the most powerful consideration to speak the truth; situation so solemn that law considers the same as creating an obligation

equal to that which is imposed by a positive oath administered in a court of justice. ...

178. Dealing with oral dying declaration, a two-Judge Bench in *Prakash and Anr. v. State of Madhya Pradesh* (1992) 4 SCC 225 has ruled thus:

11. ... In the ordinary course, the members of the family including the father were expected to ask the victim the names of the assailants at the first opportunity and if the victim was in a position to communicate, it is reasonably expected that he would give the names of the assailants if he had recognised the assailants. In the instant case there is no occasion to hold that the deceased was not in a position to identify the assailants because it is nobody's case that the deceased did not know the accused persons. It is therefore quite likely that on being asked the deceased would name the assailants. In the facts and circumstances of the case the High Court has accepted the dying declaration and we do not think that such a finding is perverse and requires to be interfered with. ...

179. In *Vijay Pal v. State* (Government of NCT of Delhi) (2015) 4 SCC 749, after referring to the Constitution Bench decision in *Laxman* (supra) and the two-Judge Bench decisions in *Babulal* (supra) and *Prakash* (supra), the Court held:

22. Thus, the law is quite clear that if the dying declaration is absolutely credible and nothing is brought on record that the deceased was in such a condition, he or she could not have made a dying declaration to a witness, there is no justification to discard the same. In the instant case, PW 1 had immediately rushed to the house of the deceased and she had told him that her husband had poured kerosene on her. The plea taken by the Appellant that he has been falsely implicated because his money was deposited with the in-laws and they were not inclined to return, does not also really

breathe the truth, for there is even no suggestion to that effect.

23. It is contended by the learned Counsel for the Appellant that when the deceased sustained 100% burn injuries, she could not have made any statement to her brother. In this regard, we may profitably refer to the decision in *Mafabhai Nagarbhai Raval v. State of Gujarat* (1992) 4 SCC 69 wherein it has been held that a person suffering 99% burn injuries could be deemed capable enough for the purpose of making a dying declaration. The Court in the said case opined that unless there existed some inherent and apparent defect, the trial court should not have substituted its opinion for that of the doctor. In the light of the facts of the case, the dying declaration was found to be worthy of reliance.

24. In *State of M.P. v. Dal Singh* (2013) 14 SCC 159, a two-Judge Bench placed reliance on the dying declaration of the deceased who had suffered 100% burn injuries on the ground that the dying declaration was found to be credible.”

As regards duty of the Court in appreciation of evidence and cautioning the Courts not to attach undue importance to discrepancies, where the contradictions sought to be brought up from the evidence of the prosecution witnesses are immaterial and or no consequence, and minor variations in the testimonies of the witnesses are often, the hallmark of truth of the testimony, and trivial discrepancies ought not to obliterate an otherwise acceptable evidence, and due to efflux of time, there are bound to be minor contradictions/discrepancies in the statements of the prosecution witnesses, but such minor discrepancies and inconsistencies are only natural since when truth is sought to be projected through

human, there are bound to be certain inherent contradictions, the Hon'ble Apex Court held in paragraph No.383 thus:

“383. Courts should not attach undue importance to discrepancies, where the contradictions sought to be brought up from the evidence of the prosecutrix are immaterial and of no consequence. Minor variations in the testimony of the witnesses are often the hallmark of truth of the testimony. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. Due to efflux of time, there are bound to be minor contradictions/discrepancies in the statement of the prosecutrix but such minor discrepancies and inconsistencies are only natural since when truth is sought to be projected through human, there are bound to be certain inherent contradictions. But as held in *Om Prakash v. State of U.P.* (2006) 9 SCC 787, the Court should examine the broader probabilities of a case.”

In the very same context, the observations of the Hon'ble Apex Court contained in paragraph Nos.388, 389, 390, 391, 392, 393, 396, 397, 398 and 403 are apt to refer to reading thus:

“388. Dying declaration is a substantial piece of evidence provided it is not tainted with malice and is not made in an unfit mental state. Each case of dying declaration has to be considered in its own facts and circumstances in which it is made. However, there are some well-known tests to ascertain as to whether the statement was made in reference to cause of death of its maker and whether the same could be relied upon or not. The Court also has to satisfy as to whether the deceased was in a fit mental state to make the statement. The Court must scrutinize the dying declaration carefully and ensure that the declaration is not the result of tutoring, prompting or imagination. Once the Court is satisfied that the

declaration is true and voluntary, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. That the deceased had the opportunity to observe and identify the assailants and was in a fit state to make the declaration. [K. Ramachandra Reddy and Anr. v. Public Prosecutor (1976) 3 SCC 618]

389. The principles governing dying declarations have been exhaustively laid down in several judicial pronouncements. In Paniben (Smt.) v. State of Gujarat (1992) 2 SCC 474, this Court referred to a number of judgments laying down the principles governing dying declaration. In this regard, I find it apposite to quote the following from Paniben (supra) as under:

18. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailants. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under:

- (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Munnu Raja v. State of M.P. (1976) 3 SCC 104)
- (ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (State of U.P. v. Ram Sagar Yadav (1985) 1 SCC 522; Ramawati Devi v. State of Bihar (1983) 1 SCC 211).
- (iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (K. Ramachandra Reddy v. Public Prosecutor (1976) 3 SCC 618).
- (iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (Rasheed Beg v. State of M.P. (1974) 4 SCC 264)
- (v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh v. State of M.P. (1981) Supp. SCC 25)
- (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P. (1981) 2 SCC 654)
- (vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurti Laxmipati Naidu (1980) Supp. SCC 455)
- (viii) Equally, merely because it is a brief statement, it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth. Surajdeo Oza v. State of Bihar (1980) Supp. SCC 769)
- (ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness

has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanahau Ram v. State of M.P. (1988) Supp. SCC 152)

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (State of U.P. v. Madan Mohan (1989) 3 SCC 390)

The above well-settled tests relating to dying declarations and the principles have been elaborately considered in a number of judgments. [Vide Khushal Rao v. State of Bombay, AIR 1958 SC 22; State of Uttar Pradesh v. Ram Sagar Yadav (1985) 1 SCC 552; State of Orissa v. Bansidhar Singh (1996) 2 SCC 194; Panneerselvam v. State of Tamil Nadu (2008) 17 SCC 190; Atbir v. Govt. of NCT of Delhi (2010) 9 SCC 1 and Umakant and Anr. v. State of Chhattisgarh (2014) 7 SCC 405].

390. Multiple Dying Declarations: In cases where there are more than one dying declarations, the Court should consider whether they are consistent with each other. If there are inconsistencies, the nature of the inconsistencies must be examined as to whether they are material or not. In cases where there are more than one dying declaration, it is the duty of the Court to consider each one of them and satisfy itself as to the voluntariness and reliability of the declarations. Mere fact of recording multiple dying declarations does not take away the importance of each individual declaration. Court has to examine the contents of dying declaration in the light of various surrounding facts and circumstances. This Court in a number of cases, where there were multiple dying declarations, consistent in material particulars not being contradictory to each other, has affirmed the conviction. [Vide Vithal v. State of Maharashtra (2006) 13 SCC 54].

391. In *Amol Singh v. State of Madhya Pradesh* (2008) 5 SCC 468, while discarding the two inconsistent dying declarations, laid down the principles for consideration of multiple dying declarations as under:

13. Law relating to appreciation of evidence in the form of more than one dying declaration is well settled. Accordingly, it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration. The statement should be consistent throughout. If the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent. (See *Kundula Bala Subrahmanyam v. State of A.P.* (1993) 2 SCC 684) However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely, whether they are material or not. While scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.

392. In *Ganpat Mahadeo Mane v. State of Maharashtra* (1993) Supp. (2) SCC 242, there were three dying declarations. One recorded by the doctor; the second recorded by the police constable and also attested by the doctor and the third dying declaration recorded by the Executive Magistrate which was endorsed by the doctor. Considering the third dying declaration, this Court held that all the three dying declarations were consistent and corroborated by medical evidence and other circumstantial evidence and that they did not suffer from any infirmity.

393. In *Lakhan v. State of M.P.* (2010) 8 SCC 514, this Court considered a similar situation where in the first dying declaration given to a police officer was more elaborate and

the subsequent dying declaration recorded by the Judicial Magistrate lacked certain information given earlier. After examining the contents of the two dying declarations, this Court held that there was no inconsistency between two dying declarations and non-mention of certain features in the dying declarations recorded by the Judicial Magistrate does not make both the dying declarations inconsistent.

396. As per the settled law governing dying declarations, even if there are minor discrepancies in the dying declarations, in the facts and circumstances of the case, the Court can disregard the same as insignificant. A three-Judge Bench of this Court in *Abrar v. State of Uttar Pradesh* (2011) 2 SCC 750, held that it is practical that minor discrepancies in recording dying declarations may occur due to pain and suffering of the victim, in case the declaration is recorded at multiple intervals and thus, such discrepancies need not be given much emphasis.

12. It is true that there are some discrepancies in the dying declarations with regard to the presence or otherwise of a light or a torch. To our mind, however, these are so insignificant that they call for no discussion. It is also clear from the evidence that the injured had been in great pain and if there were minor discrepancies inter se the three dying declarations, they were to be accepted as something normal. The trial court was thus clearly wrong in rendering a judgment of acquittal solely on this specious ground. We, particularly, notice that the dying declaration had been recorded by the Tahsildar after the doctor had certified the victim as fit to make a statement. The doctor also appeared in the witness box to support the statement of the Tahsildar. We are, therefore, of the opinion, that no fault whatsoever could be found in the dying declarations.

397. When a dying declaration is recorded voluntarily, pursuant to a fitness report of a certified doctor, nothing much remains to be questioned unless, it is proved that the dying

declaration was tainted with animosity and a result of tutoring. Especially, when there are multiple dying declarations minor variations does not affect the evidentiary value of other dying declarations whether recorded prior or subsequent thereto. In *Ashabai and Anr. v. State of Maharashtra* (2013) 2 SCC 224, it was held as under:

15.As rightly observed by the High Court, the law does not insist upon the corroboration of dying declaration before it can be accepted. The insistence of corroboration to a dying declaration is only a rule of prudence. When the Court is satisfied that the dying declaration is voluntary, not tainted by tutoring or animosity, and is not a product of the imagination of the declarant, in that event, there is no impediment in convicting the accused on the basis of such dying declaration. When there are multiple dying declarations, each dying declaration has to be separately assessed and evaluated and assess independently on its own merit as to its evidentiary value and one cannot be rejected because of certain variation in the other.

398. Considering the present case on the anvil of the above principles, I find that though there was time gap between the declarations, all the three dying declarations are consistent with each other and there are no material contradictions. All the three dying declarations depict truthful version of the incident, particularly the detailed narration of the incident concerning the rape committed on the victim, insertion of iron rod and the injuries caused to her vagina and rectum, unnatural sex committed on the victim and throwing the victim and P.W. 1 out of the moving bus. All the three dying declarations being voluntary, consistent and trustworthy, satisfy the test of reliability.

403. Corroboration of Dying declaration by Medical Evidence: The dying declaration is amply corroborated by medical evidence depicting injuries to vagina and internal

injuries to rectum and recto-vaginal septum as noted by P.W. 49 Dr. Rashmi Ahuja and P.W. 50 Dr, Raj Kumar Chejara. On the night of 16.12.2012, the prosecutrix was medically examined by P.W. 49 who recorded her injuries and statement in the MLC (Ex. P.W. 49/B). On local examination, a sharp cut over right labia and a 6 cm long tag of vagina was found hanging outside the introitus. Vaginal examination showed bleeding and about 7 to 8 cm long posterior vaginal wall tear. A rectal tear of about 4 to 5 cm was also noticed communicating with the vaginal tear. Apart from the said injuries to the private parts of the prosecutrix, guarding and rigidity was also found in her abdomen and several bruises and marks on face were noticed. Bruises and abrasions around both the eyes and nostrils were also found. Lips were found edematous and left side of the mouth was injured by a small laceration. Bite marks over cheeks and breast, below areola, were also present. Bruises over the left breast and bite mark in interior left quadrant were prominent.”

17. Thus, there are clear guidelines laid down by the Honourable Apex Court as well as caution given to the Courts in considering the dying declarations as to what ought to be taken into account to rely on dying declarations.

18. Turning to the case on hand, we intend to take Ex.P-4 initially. Ex.P-4-dying declaration of the deceased was recorded by PW-7. The deceased was admitted at 2.15 p.m on 17.03.2017, in the Government Hospital, Hindupur, as per the evidence of PW9 who was duty medical officer then. He has given intimation to PW7 and the evidence of PW7 was that on 17.03.2010, he received requisition from the Government Hospital, Hindupur, to record the

statement of injured Parvathamma, at 2.50 p.m and he immediately rushed to the Hospital. The said requisition was marked as Ex.P-3 which is called MLC intimation from Government Hospital. His evidence shows that he went to the Government Hospital and found Parvathamma (deceased herein) with burns and taking treatment. He found the duty doctor present there. He initially put certain questions in order to ascertain whether she would be able to give statement as to the cause of burns she sustained. Basing on the answers she had given, having satisfied himself that the deceased was conscious and can make statement, proceeded with the relevant questions as to how she sustained injuries. As per Ex.P-4, the deceased made statement that her husband-accused who is appellant, suspecting her fidelity poured kerosene on her at 1.00 p.m and lit fire resulting burns. After she made that statement the contents were read over to her and she admitted the same to be true and correct. The learned Magistrate would assert that he has taken all precautions while recording statement of injured Parvathamma. The precautions which he was referring to were before he put the questions initially, to satisfy himself that the deceased can make statement, the doctor who was present there has endorsed that the deceased was conscious to make statement. After he has recorded the statement the duty doctor-PW.9, once again endorsed that the deceased was in fit state of mind while recording statement. Thus, he has completed recording of statement at 3.25 p.m.

19. What is vital for the present purpose is recording of statement of deceased by PW.7 just immediately after she was admitted in the hospital, thus, ruling out any sort of tutoring in making such statement that was recorded in Ex.P-4. Thus, the veracity of Ex.P-4 cannot be doubted as it was not made by 'tutoring' or result of tutoring. The evidence of PW.9 shows that he has certified in Ex.P-4 that the deceased was in fit state of mind and conscious while PW.7 was recording the statement.

20. Therefore, viewed from any angle certainly, the dying declaration, Ex.P-4 cannot be viewed with any suspicion and the same has to be relied on to constitute the basis to prove the charges alleged against the accused by the prosecution.

21. Looking at corroboration or support, the evidence of PW.11 would become relevant. PW.11 recorded the statement of the deceased at 4.30 pm. in the presence of duty doctor. His evidence also shows that PW.9-duty doctor certified about the state of mind of Parvathamma while making her statement. He asserts that the deceased parvathamma stated before him as to the cause of death to the effect that on 17.03.2010 at about 1.30 p.m., the accused poured kerosene on her and lit fire resulting burns suspecting her fidelity. PW.11 and PW.7 though, cross-examined by the learned counsel for the accused-appellant, nothing is brought out so as to discredit

their testimony. Thus, we are of the view that the evidence of PW.11 completely corroborates the evidence of PW.7.

22. The statements of PWs.1 to 3 would show that they rushed to the deceased immediately after hearing the loud cry and they found Parvathamma with burns and when they enquired the injured, she told that her husband poured kerosene and lit fire to her suspecting her fidelity. On this aspect of the case nothing is to be found in their cross examination to discredit their testimony. Therefore, the third type of dying declaration also corroborates Ex.P-4. Thus, we have no hesitation in accepting Ex.P-4 and acting upon to hold that the Prosecution could prove the charges under Sections 498-A and 302 IPC.

23. When the findings recorded by the Court below are seen, the learned trial Judge taken into consideration the evidence of PWs.1 to 3, so as to find the statement made by the deceased constituting dying declaration. The learned trial Judge has also elaborately discussed the evidence of PW.7 in the context of recording Ex.P-4 and found that Ex.P-4 is absolutely reliable. He found corroboration through the statement recorded by PW.11 as in Ex.P-9. Of course, the learned trial Judge has also extracted the initial questions put and the answers given by Parvathamma recorded by PW.7 in Ex.P-4 in paragraph No.12 of his judgment and placed reliance in **Govindappa & others v. State of Karnataka (2010 CrI.L.J.3439)**

extracting paragraphs 15 and 16 containing the expression of the Honourable Apex Court in the context of dying declarations and found that Ex.P-4-dying declaration and Ex.P-9-complaint statement of the deceased, plainly demonstrate that the accused failed to discharge his burden rather he has made a crude attempt to escape from the criminal liability setting up a false defence.

24. Of course, we are not intending to examine the truth or otherwise in the defence set up by the appellant herein for the reason that the evidence let in by the prosecution through dying declaration is clinching to hold that the prosecution could prove the charges framed against the accused/appellant beyond all reasonable doubt. Thus, on our independent analysis on appreciation of evidence on record as discussed above we are not disagreeing with the conclusion arrived at by the learned trial Judge.

25. One of the submissions made by the learned counsel for the appellant - accused in an attempt to improbabilise the dying declaration made by the deceased under Ex.P-4 is, that the deceased sustained accidental burns and succumbed to burns, in view of the fact that there is no direct evidence to prove that the accused poured kerosene and set fire to her and even PW.4 did not assert that she did actually witness the accused when he was fleeing away, though, she was examined intending to prove the said fact, but, we are of the view that the complaint-statement and dying declaration

coupled with that she sustained 90% burns as per the medical evidence, are all sufficient to repel the defence story that the deceased sustained accidental burns and succumbed to accidental death, more particularly, when his statement under Section 313 of the Code does not reflect that he has mentioned before the learned trial judge that the deceased sustained accidental burns and succumbed to death.

26. The decisions relied on by the learned counsel referred to above were rendered in the fact-situation occurred therein. In the first case i.e. **Ganga Dass alias Godha (Supra 1)**, the Honourable Apex Court found that only one blow was dealt on the head of the deceased with an iron pipe and death of the deceased therein took place 18 days later due to septicaemia. That was the consideration where the conviction and the sentence of imprisonment were modified to that of Section 304 Part II IPC.

27. In the second case, as already mentioned in the above it was gun shot injuries to the deceased and the injured died nearly 1 ½ months after the incident, who was subjected to multiple surgeries and secondary haemorrhage resulting in death, the Honourable Apex Court held that the death of the deceased was not direct result of the injuries and thereby convicted under Section 326 IPC.

28. In view of the discussion herein before made by us, we are of the considered opinion that there is no merit in the present appeal.

29. The Criminal Appeal is, therefore, dismissed.

30. Since the appellant-accused herein viz.C.Hanumanthappa, was enlarged on bail by this Court by the order dated 05.12.2016 in Crl.A.MP.No.1949 of 2016, following the order in Crl.A.MP.No.1687 of 2016 in Crl.A.No.607 of 2011 (**Batchu Ranga Rao and Others v. The State of Andhra Pradesh, Rep. by its Public Prosecutor**) and since he is absent to-day, he is directed to surrender before the Superintendent, Central Prison, Kadapa, by 27.03.2018, to serve out the remaining period of sentence.

As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.



A.RAJASHEKER REDDY, J

A. SHANKAR NARAYANA, J

Date: 03.03.2018.

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