HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D. B. Criminal Appeal No. 180/2011

Meetha Ram son of Shri Dhula Gameti, R/o Village Richwada, P.S. Sayra, District Udaipur

(Presently lodged in Central Jail, Udaipur)

----Appellant

Versus

State of Rajasthan

----Respondent

For Appellant : Mr. Deepak Menaria
For Respondent : Mr. Anil Joshi, P.P.

HON'BLE MR. JUSTICE SANDEEP MEHTA
HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

Judgment

Per Hon'ble Mr. Vinit Kumar Mathur, J.

03/04/2019

The present criminal appeal under Section 374(2) of Cr.P.C. has been preferred by the accused-appellant against the judgment and order of conviction dated 22.02.2011 passed by the learned Additional Sessions Judge (Fast Track) No. 1, Udaipur in Sessions Case No. 05/2009 (State V/s Meetha Ram) whereby the accused-appellant was acquitted of the offence under Section 498-A of I.P.C. by extending benefit of doubt but was convicted and sentenced as under :-

Offence	**Sentence**
U/s 302 I.P.C.	Life imprisonment with fine of Rs. 1,000/- and in default of payment of fine to further undergo 01 month additional simple imprisonment

The prosecution story emanates from a written report (Ex.P/1) filed by Bhera (P.W. 1) at the Police Station Sayra, District Udaipur on 11.10.2008 at 8.15 P.M. wherein it was stated that his daughter Smt. Vanki Bai was married to Meetha for last four years. Meetha was staying in the close vicinity of his house. The couple had a year old daughter. On 11.10.2008 at around 6:00 P.M., he heard shrieks coming from the house of his daughter. He rushed towards the house of his daughter and when he reached there, his daughter told him that Meetha had poured kerosene over her body and set her afire. He and his wife Mugali saw the clothes of their daughter Vanki aflame and by putting the blanket, they tried to douse the fire. When they reached the house of their daughter, their son-in-law was present but immediately thereafter, he ran away from the place of occurrence. He, thus, alleged that his son-in-law tried to kill his daughter by burning.

On the basis of this written report, a formal F.I.R. No. 168/2008 (Ex.P/11) was registered at Police Station Sayra, District Udaipur for the offences under Sections 498-A & 307 of I.P.C. against the accused and the investigation was commenced. The victim Vanki Bai died while undergoing treatment and therefore, the police added Section 302 I.P.C. in the matter and arrested the accused-appellant on 12.10.2008.

After conclusion of investigation, the police filed charge-sheet against the accused-appellant for the offences under Sections 498-A & 302 I.P.C.

Learned trial court framed, read over and explained the charges for the offences under Sections 498-A & 302 I.P.C. to the accused-appellant, who pleaded not guilty and sought trial.

During the trial, the prosecution examined as many as 14 witnesses and exhibited documents from Ex.P/1 to Ex.P/19 in support of its case.

The accused-appellant was examined under Section 313 Cr.P.C. and he was confronted with the evidence adduced against him during the course of trial, which he denied and stated that during the incident, when Vanki sustained the burn injuries, he was at Marwar for his labour work and he was informed of the same by his family members. When he returned home, he came to know that his wife had sustained burn injuries. The accused-appellant got D.W. 1 – Bhera s/o Kala examined in his defence.

Learned trial Court, after hearing the arguments from both the sides, acquitted the accused-appellant of the offence under Section 498-A I.P.C. by extending him the benefit of doubt but convicted and sentenced him as above vide judgment dated 22.02.2011. Hence this appeal.

We have heard the arguments advanced by learned counsel for the accused-appellant and the learned Public Prosecutor.

Learned counsel for the accused-appellant has fervently argued that there is no reliable evidence available against the accused-appellant so as to convict him for the offence under Section 302 I.P.C. The dying declaration (Ex.P/17) is not reliable and the same was not recorded after getting the certificate of fitness from the duty doctor concerned and, therefore, the same is required to be discarded. He further contends that PW-1 Bhera and PW-4 Smt. Mugali Bai who are father and mother of the

deceased, have been declared hostile. No other cogent and convincing evidence was brought on record by the prosecution to support the allegations levelled against the accused-appellant in the case.

Learned counsel on the strength of these arguments urges that the prosecution could not prove the offence alleged in the case beyond reasonable doubt and therefore, the learned trial court committed grave factual and legal error while convicting and sentencing the accused-appellant for the alleged offence as above vide Judgment dated 22.02.2011 and thus, he is entitled to be acquitted of the charges levelled against him.

Per contra, learned Public Prosecutor has submitted that the dying declaration of the deceased Vanki Bai (Ex.P/17) clearly states that the accused-appellant poured kerosene over her body and set her afire. He further submits that the dying declaration (Ex.P/17) was recorded by P.W. 13 - Surendra Purohit, the Judicial Magistrate (South), Udaipur. He consulted the duty doctor who certified that the patient was fit to give the statement vide Ex.P/16. He recorded the statement of Vanki Bai (Ex.P/17). Learned Public Prosecutor further contended that there is no reason to disbelieve the dying declaration (Ex.P/17) as the same gets full corroboration from the medical evidence in the shape of statement of the doctor i.e. P.W. 14 – Dr. Manish Kumar Sharma and the postmortem report (Ex.P/13) wherein, the cause of death of the deceased was shown to be septicemic shock because of ante mortem burn injuries. He further submitted that the prosecution has been able to prove beyond all manner of doubt that it was accused-appellant alone and none else, who was involved in the commission of the offence alleged in the case. He

further submitted that the learned trial court, after evaluating the entire facts and evidence, come to the only possible and logical conclusion of the guilt of the accused and rightly convicted the accused-appellant for the offence alleged in the case vide Judgment dated 22.02.2011, which does not warrant any interference by this Court.

We have considered the submissions made at bar and minutely gone through the record of the learned trial court as well as the judgment dated 22.02.2011 impugned herein.

The dying declaration of Vanki Bai (Ex.P/17) recorded by P.W. 13 - Surendra Purohit, the Judicial Magistrate (South), Udaipur which is in form of a questionnaire, clearly conveys that her husband i.e. accused-appellant Meetha Ram, came to their house in inebriated condition and when she gave him 'Bati' (Hard Wheat Rolls), he threw the same and caught hold of her hand. He dragged her inside and thereafter poured kerosene on her person and set her afire. She further stated that her husband, on earlier occasions also, fought with her after consuming liquor. He had burnt her alive after consuming liquor. Her mother tried to save her by putting a cloth. The name of her husband is Meetha Ram. She had one daughter, namely, Homi who is one year old.

For better appreciation of the statement, the dying declaration (Ex.P/17) is reproduced in vernacular as under :-

"मृत्युकालीन कथन

नाम :– वनकी बाई w/o मीठा गमेती निवासी – रिछवाडा, सायरा
स्थान :– M.B. हॉस्पीटल, बर्न वार्ड नं. 33 बैड नं 4
दिनांक :– 12–10–08 समय :– 4.05 Pm
F.I.R. N. – 168/08 अन्तर्गत धारा 498A, 307 IPC

Q. आपका नाम क्या है
Ans. मारो नाम वनकी है

Q. आपकी ये हालत कैसे हुई
Ans. मारो घरवालों मीठा दारू पीर घर आयो और मे बाटी दी तो फेक दी और हाथ पकड कर अन्दर ले जाकर मेरे ऊपर घ ासलेट डाल कर माचिस लगा दी

Q. आपको और क्या कहना है
Ans. मारो घरवालो दारू पीकर पहले भी झगडा करता था उसी ने दारू पीकर मुझे जलाया मुझे मेरी मां ने कपड़ा डालकर बचाया था

Q. आपके पति का नाम क्या है
Ans. मेरे पति का नाम मीठा है

Q. आपके कितने बच्चे है
Ans. मेरे एक लड़की है नाम होमी है जो एक साल की है"

The dying declaration (Ex.P/17) is clear and specific pointing towards the fact that the accused-appellant poured kerosene and set fire to Vanki Bai with the intention of killing her. There is no reason for us to disbelieve this dying declaration (Ex.P/17) as PW-13 – Surendra Purohit, who recorded the same stated that after getting the fitness certificate of duty doctor and recording his satisfaction, he recorded the statement of Smt. Vanki Bai. The dying declaration (Ex.P/17) and the statement of PW-13 – Surendra Purohit, the Judicial Magistrate (South), Udaipur are fully corroborated from the medical evidence as P.W. 11 - Dr. Surendra Singh Thakral who conducted the autopsy upon the dead body of the deceased Vanki Bai described the extensive burn injuries noticed on the body of the deceased and stated that the cause of death was shock due to septicemia which was caused by ante mortem burns. The same gets fortified by the postmortem report (Ex.P/13) wherein the cause of death was shown as septicimical shock caused by ante mortem burn injuries.

The argument of the learned counsel that the dying declaration (Ex.P/17) is not reliable is outrightly rejected for the

reason that the same was recorded by none other than the Judicial Magistrate i.e. P.W. 13 - Surendra Purohit after satisfying himself with the condition of fitness of the patient from the duty doctor. The dying declaration (Ex.P/17) is worth credence and does not suffer from any infirmity. The same is also fully corroborated by the medical evidence.

The explanation offered by the accused-appellant in his statement under Section 313 Cr.P.C. by taking plea of alibi is a flimsy attempt just to save himself on a ground which was non-existent right from the beginning. His presence at the place of occurrence has been well established by PW-1 and in the wake of the clinching evidence of dying declaration.

The argument of the learned counsel that PW-1 Bhera and PW-4 – Mugali Bai have been declared hostile will not help the accused-appellant as his presence at the place of occurrence is established by unimpeachable evidence in the form of the dying declaration of the deceased.

We may observe that a lady on the death bed will not give false testimony so as to implicate none other than her husband. It is presumed that normally a person on the death bed will speak the truth by giving the correct version of the incident.

The Hon'ble Supreme Court in the case of ***Satish Ambanna Bansode V. State of Maharashtra*** reported in ***AIR 2009 SC 1626*** has held as under;

> "12. 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 the deceased was not as a result of either tutoring, or 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 assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction on the same 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 as indicated in Paniben v. State of Gujarat (1992(2) SCC 474) (SCC pp.480-81, paras 18-19)

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. [See: 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. (See: State of U.P. v. Ram Sagar Yadav (1985(1) SCC 552) and Ramawati Devi v. State of Bihar 1983(1) SCC 211))

(iii) The 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 an opportunity to observe and identify the assailants and was in a fit state to make the declaration. [See: K. Ramachandra Reddy v. Public Prosecutor(1976 (3) SCC 618)])

(iv) Where a dying declaration is suspicious, it should not be acted upon without corroborative evidence. [See: 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. [See: 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. [See: 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. (See State of Maharashtra v. Krishnamurti Laxmipati Naidu [1980 Supp. SCC455)]

> (viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. [See: Surajdeo Ojha v. State of Bihar (1980 Supp.SCC 769)]
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> (ix) Normally, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. [See: Nanhau Ram v. State of M.P.(1988 Supp. SCC 152)]
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> (x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. [See: State of U.P. v. Madan Mohan (1989 (3) SCC 390)]
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> (xi) Where there are more than one statements in the nature of dying declaration, the one first in point of time must be preferred. Of course, if the plurality of the dying declaration could be held to be trustworthy and reliable, it has to be accepted. [See: Mohanlal Gangaram Gehani v. State of Maharashtra (1982 (1) SCC 700)]
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> 13. In the light of the above principles, the acceptability of the alleged dying declaration in the instant case has to be considered. The dying declaration is only a piece of untested evidence and must, like any other evidence, satisfy the court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. 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. (See Gangotri Singh v. State of U.P.(1993 Supp(1)SCC 327).”

Further, in the judgment of the Hon’ble Supreme Court in the case of ***Om Pal Singh V. State of U.P.*** reported in ***AIR 2011 SC 1562***, it has been held as under;

> “20. This now brings us to the submissions with regard to the dying declaration. Factually, it is to be noticed that the Tehsildar, who recorded the dying declaration appeared as PW-6, he has clearly stated that although no doctor was present in the hospital, he was informed by the pharmacist that Rishipal Singh was in a fit state to make a statement. He, thereafter, isolated the injured Rishipal Singh and recorded his statement. He further

stated that he wrote down word by word what Rishipal Singh had stated. The contents of the statement were read to the injured who stated that he understood and accepted the same. Only thereafter, he put his thumb impression on the statement. It is undoubtedly true that the statement has not been recorded in the question and answer form. It is also correct that at the time when the statement was recorded Rishipal Singh was in a "serious condition".

21. This Court in Laxman case (AIR 2002 SC 2973) (supra) has enumerated the circumstances in which the dying declaration can be accepted. We may notice here the observations made in the Paragraph 3, which are as under:-

The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. 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.
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> Consequently, what evidential value 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."

Further, in **D.B. Criminal Appeal No.270/2009 (Nausad V/s State of Rajasthan)** decided on 30.08.2018, this Hon'ble Court held as under:-

> "27. Law on the admissibility of the dying declarations is well settled. In Jai Karan v. State of N.C.T., Delhi reported in (1999) 8 SCC 161, this Court explained that a dying declaration is admissible in evidence on the principle of necessity and can form the basis of conviction if it is found to be reliable. In order that a dying declaration may form the sole basis for conviction without the need for independent corroboration it must be shown that the person making it had the opportunity of identifying the person implicated and is thoroughly reliable and free from blemish. If, in the facts and circumstances of the case, it is found that the maker of the statement was in a fit state of mind and had voluntarily made the statement on the basis of personal knowledge without being influenced by others and the court on strict scrutiny finds it to be reliable, there is no Rule of law or even of prudence that such a reliable piece of evidence cannot be acted upon unless it is corroborated. A dying declaration is an

> independent piece of evidence like any other piece of evidence, neither extra strong or weak, and can be acted upon without corroboration if it is found to be otherwise true and reliable. There is no hard and fast Rule of universal application as to whether percentage of burns suffered is determinative factor to affect credibility of dying declaration and improbability of its recording. Much depends upon the nature of the burn, part of the body affected by the burn, impact of the burn on the faculties to think and convey the idea or facts coming to mind and other relevant factors. Percentage of burns alone would not determine the probability or otherwise of making dying declaration. Physical state or injuries on the declarant do not by themselves become determinative of mental fitness of the declarant to make the statement (See Rambai v. State of Chhatisgarh : (2002) 8 SCC 83)"

In view of discussion made above, we are of the firm opinion that the judgment dated 22.02.2011 passed by the learned trial court convicting and sentencing the accused-appellant for the offence under Section 302 of I.P.C. deserves to be upheld.

Resultantly, the criminal appeal fails and is dismissed as such. The judgment and order dated 22.02.2011 passed by the learned trial court is upheld. The record of the trial court be returned forthwith.

(VINIT KUMAR MATHUR),J **(SANDEEP MEHTA),J**

4-Inder/-