



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 168 OF 2017

Bapu Bajarang Patil
Age 40 yrs., Occ. Labour,
R/o Vitbhatti, Devpur,
Tq. & Dist.Dhule

... Appellant
[Orig. Accused]

Versus

The State of Maharashtra
Through Police Station Officer,
Police Station Devpur, Dist.Dhule.

... Respondent

.....
Ms.Harshita M. Manglani, Advocate for Appellant (appointed)
Mr. S.D.Ghayal , APP for Respondent-State
.....

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

**RESERVED ON : 11 OCTOBER, 2023
PRONOUNCED ON : 23 OCTOBER, 2023**

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

1. Present appeal is directed against judgment and order of learned learned Additional Sessions Judge, Dhule in Sessions Case No.95 of 2015 dated 29-09-2016, by which appellant is convicted for offence under Section 302 of the Indian Penal Code (IPC) and sentenced to suffer imprisonment for life till remainder of his natural life and to pay fine.

2. Shorn of details, the case set up by prosecution is as under:

Deceased Ratnabai was married to appellant and out of their wedlock they had children. Accused who was addicted to liquor used to suspect fidelity of deceased. On the intervening night of 16-05-2015 and 17-05-2015, accused came home drunk and raised suspicion on the character of deceased and thereafter, he poured kerosene over her and set her ablaze resulting into 87% of burns. While taking treatment, two dying declarations were recorded at Exh.15 and Exh.24 respectively. Crime was registered on the basis of second dying declaration recorded at 01:40 a.m. for offence under Section 307 of the IPC. While undertaking treatment, deceased succumbed to burns and therefore, crime was converted into Section 302 of the IPC and accused was arrested, chargesheeted and tried and the fate of trial ended up as above.

3. In support of its case, prosecution has adduced evidence of in all eight witnesses. Their status is as under :

EVIDENCE ON BEHALF OF PROSECUTION

PW1 Sandip Rohidas Patil is Pancha to spot Panchanama. His evidence is at Exh.E-9.

PW2 Sanjay Suresh Mali is Driver and he is another Pancha to Spot Panchanama. His evidence is at Exh.10.

PW3 Jyoti Bapu Patil is daughter of deceased and accused. Her evidence is at Exh.11.

PW4 Kailas Ramdas Patil is Police Naik, who recorded dying declaration Exh.15. His evidence is at Exh.13.

PW5 Dr.Kapileshwar Maganlal Chaudhari is Autopsy Doctor. His evidence is at Exh.18.

PW6 Mahendra Bhaskar Joshi is Special Executive Magistrate, who recorded dying declaration Exh.24. His evidence is at Exh.22.

PW7 Dr.Dinesh Sahebrao Dahite is the Medical Officer, who has made endorsement of fitness for giving statement to Special Executive Magistrate. His evidence is at Exh.27.

PW8 Deepak Prakash Dhoke is the Investigating Officer. His evidence is at Exh.33.

4. It seems that in the trial Court, prosecution was heavily relied on dying declarations on the ground that they are consistent and truthful versions coupled with evidence of child witness, who is daughter of accused and deceased.

SUBMISSIONS

On behalf of appellant :

5. Before us, learned Counsel for the appellant would criticize the judgment under challenge by pointing out that firstly dying declarations are

unworthy of credence and they cannot be said to be consistent. Learned Counsel even doubted the very capacity and fitness of deceased to give statement. In support of such doubt, she relied on the evidence of examining Doctor, who according to her, candidly admitted to that extent. She would further submit that though there is evidence of child witness, it is inconsistent with the version given by deceased and the motive attributed in the dying declaration and her version is also contrary. She also questioned the prosecution case pointing out that, there is no prompt recording of dying declaration and there is delay in recording the same. Therefore, according to her, there is possibility of deceased being tutored and as such her statement cannot be said to be voluntary one. She also found fault in the findings and reasons assigned by the learned trial Judge by submitting that law on dying declaration has not been correctly appreciated. Learned Counsel would question as to what was the reason for recording two dying declarations that too in quick succession and as there is no explanation, it is her case that present case is fabricated and manufactured to falsely implicate the appellant.

6. Learned Counsel for the appellant even questioned the sentencing policy adopted by the learned trial Judge by pointing out that it was not open for the learned Additional Sessions Judge to direct the appellant to suffer imprisonment for entire period of remaining of his life.

For all above reasons, she seeks interference at the hands of this Court by allowing prayers. She sought reliance on :

- (i) ***Union of India v. V. Shriharan***; (2016) 7 SCC 1
- (ii) ***Narendra Singh @ Mukesh @ Bhura v. The State of Rajasthan***; 2022 LiveLaw SC 247.
- (iii) ***Ravdeep Kaur v. State of Punjab and Ors.*** (Criminal Writ Petition No.3794 of 2023, decided by Punjab and Haryana High Court on 29-09-2023).

On behalf of State :

7. Per contra learned APP, canvassing in favour of the impugned judgment, would submit that occurrence has taken place in the intervening night of 16-05-2015 and 17-05-2015. Deceased was immediately shifted to the hospital. Her dying declarations are recorded. Both dying declarations are consistent about role of accused i.e. husband had poured kerosene and set her ablaze. None other than daughter of accused and deceased has deposed against her own father. Therefore, there is correct appreciation of evidence and law on appreciation of dying declaration having been applied by learned trial Judge, no fault could be found in conclusion reached at. He submits that there is no reason to disturb the findings and consequently, he prays for dismissal of the appeal.

8. The case of prosecution is mainly based on dying declarations.

Before proceeding to ascertain whether dying declarations are voluntary and inspiring confidence, we wish to state in brief, law on manner of appreciation of evidence in the form of dying declaration as well as settled principles which are culled out by the Hon'ble Apex Court from the various landmark cases like *Khushal Rao v. State of Bombay*; AIR 1958 SC 22, *Paniben v. State of Gujarat*; (1992) 2 SCC 774, *Laxman v. State of Maharashtra*; (2002) 6 SCC 710, *Ganpat Bakaramji Lad v. State of Maharashtra*; 2011 ALL MR Cri. 2249. *Surendrakumar v. State of Punjab*; (2012) 12 SCC 120, *Jagbir Singh v. State (NCT of Delhi)*; (2019) 8 SCC 779, *Madan v. State of Maharashtra*; (2019) 13 SCC 464.

Off late in the case of *State of Uttar Pradesh v. Veerapal and another*; (2022) 4 SCC 741 while deciding Criminal Appeal No.34 of 2022 on 01-02-2022, the Hon'ble Apex Court has reiterated the principles to be borne in mind while analyzing and accepting dying declaration. The settled principles are as under:

- “1. *It cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;*
2. *Each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made;*
3. *It cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence;*

4. *A dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence;*
5. *A dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character : and*
6. *In order to test the reliability of a dying declaration, the court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.”*

Similarly, in the case of ***Uttam v. State of Maharashtra; (2022) 8 SCC 576***, again certain principles are enunciated which are to be borne in mind in a case wherein the evidence is in the form of dying declaration. These principles are as under :

“(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.

(iii) The Supreme 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.

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

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected.

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction.

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

(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.

(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.

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.”

Very recently certain principles of law with regard to case involving multiple dying declarations are spelt out in the case of ***Abhishek Sharma v. State (Govt. of NCT of Delhi)*** [Criminal Appeal No.1473 of 2011, decided on 18-10-2023]. These principles read thus :

- “9.1 The primary requirement for all dying declarations is that they should be voluntary and reliable and that such statements should be in a fit state of mind;*
- 9.2 All dying declarations should be consistent. In other words, inconsistencies between such statements should be ‘material’ for its credibility to be shaken;*
- 9.3 When inconsistencies are found between various dying declarations, other evidence available on record may be considered for the purpose of corroboration of the contents of dying declarations.*
- 9.4 The statement treated as a dying declaration must be interpreted in light of surrounding facts and circumstances.*
- 9.5 Each declaration must be scrutinized on its own merits. The court has to examine upon which of the statements reliance can be placed in order for the case to proceed further.*
- 9.6 When there are inconsistencies, the statement that has been recorded by a Magistrate or like higher officer can be relied on,*

subject to the indispensable qualities of truthfulness and being free of suspicion.

9.7 *In the presence of inconsistencies, the medical fitness of the person making such declaration, at the relevant time, assumes importance along with other factors such as the possibility of tutoring by relatives, etc.”*

The ratio that is settled is that dying declaration must be firstly voluntary, truthful and secondly it should not be tutored and further the same should inspire the confidence of the Court. These are the basic principles which are to be borne in mind while appreciating dying declarations.

9. Keeping above legal position in mind while appreciating dying declaration, we proceed to re-appreciate both dying declarations which have come on record.

FIRST DYING DECLARATION

10. First dying declaration, by virtue of time, seems to be at Exh.24. It is recorded by **PW6** Mahendra Bhaskar Joshi (Special Executive Magistrate) and he has deposed about receiving memo from Deopur Police Station, and thereafter visiting Civil Hospital, Dhule, approaching Dr. Dahite, seeking examination of the patient and issuing fitness certificate and thereafter, recording the dying declaration.

In paragraph no.3 of his evidence, this witness has stated that the lady told that she and her husband were inside the house and her mother-in-law and daughter were outside the house. That her husband was always suspecting about her character and was harassing her. That on that day, he raised quarrel with her after suspecting her character. Then he poured kerosene on her person and set her on fire.

We have gone through the **cross-examination** faced by this witness. In our opinion, evidence about history behind the occurrence or what preceded the occurrence i.e. raising suspicion about character and thereafter, pouring kerosene and incinerating has not been disturbed or shaken. Mere failure of Doctor to not to issue certificate on the very statement and rather endorsing or certifying on other communication, itself will not be a good ground to raise doubt about the capacity of the deceased to give dying declaration. Even otherwise it is fairly settled that certificate by Doctor is mere rule of caution and not a necessity. Therefore, oral evidence of the witness, who has scribed the dying declaration, has not been rendered doubtful.

11. In the dying declaration recorded by this witness at Exh.24, to a question about occurrence, deceased has stated that her mother-in-law Ramabai and daughter were outside the house whereas she and her husband were inside the house. She stated that husband suspected her character and at around 11:25 p.m., he poured kerosene on her person and ignited her. This

dying declaration is recorded at 01:15 a.m. on 17-05-2015. There is right thumb impression of deceased on this dying declaration. Doctor has caused signature both before commencement of dying declaration as well as at the foot of the dying declaration.

SECOND DYING DECLARATION

12. Now let us shift over to dying declaration which is at Exh.15, which is shown to be recorded at 01:40 a.m. on 17-05-2015. This dying declaration is recorded by **PW4** Kailas Ramdas Patil, Police Naik posted at Deopur Police Station, who in his evidence at Exh.13 testified about receiving memo from Deopur Police Station, visiting hospital, making enquiry with patient. He stated that he enquired with patient as to how she burnt and narrations were recorded and subsequently, contents of the same were read over to the patient and she acknowledged it to be correct. Thereafter, he obtained her right thumb impression.

13. On going through the above dying declaration Exh.15, it is noticed that deceased Ratnabai had informed that her mother-in-law namely Ramabai and her daughter were sleeping outside in courtyard. That her husband came home drunk and under influence of liquor, he started suspecting her character as usual and thereafter, he poured kerosene on her and set her on fire. Here she stated that her husband closed the door.

14. While attempting to persuade us to allow the appeal, learned Counsel for the appellant would invite our attention to above dying declarations and submit that the dying declarations are inconsistent and contrary on material count. According to her, information about husband bolting the door is missing from first dying declaration, which is stated in second dying declaration. That Secondly PW4 Kailas has admitted that he did not obtain endorsement and certification of Doctor on the very statement. Thirdly, according to learned Counsel, there are more than one thumb impressions on dying declaration at Exh.15 and they not being identified, such dying declaration is unworthy of credence.

ANALYSIS

15. If we juxtapose first dying declaration Exh.24 with second dying declaration Exh.15, it appears that both are consistent regarding suspicion of character raised by accused husband, he arriving home under influence of liquor and that time, his mother and daughter were outside in the Courtyard. On material counts, both dying declarations are congruent to each other. The infirmities, which have pointed out by learned Counsel for the appellant in aforesaid paragraph, do not assume much significance. In spite of being cross-examined, evidence of both the witnesses, who have recorded dying declarations, has remained intact. To sum up, in our considered opinion, on re-appreciation and re-analysis of both written dying declarations, we are of

he firm opinion that both are not only voluntary but also are consistent on the material count.

16. Apart from above dying declarations, prosecution has also relying on evidence of daughter, who is a child witness and examined as **PW3** Jyoti. Her evidence at Exh.11 shows that she is a girl studying in 10th Standard. In paragraph no.2, she has stated that as she was having holidays, she and her grandmother were sitting outside the house on the cot. That her father came from outside. That her father slept in the courtyard and her mother went inside the house for drinking water. That her father also went inside the house. According to her, her father asked her mother to give Rs.1,000/-. That her mother told him that how can she give him Rs.1,000/- at this odd time. That her father told her mother that if she will not give him Rs.1,000/-, he will pour kerosene on her person and will set her on fire. That her father bolted the door from inside, he carried stove and poured kerosene on the person of her mother and thereafter, he opened the door and came outside. While coming outside, he ignited the matchstick and threw it inside and again he bolted the door from outside. She stated that when she tried to open the door, her father pushed her away. She stated that she herself, her maternal aunt were trying to open the door but her father prevented them. That her mother was shifted to hospital.

In paragraph no.5 of the **cross-examination**, she has admitted that there was no quarrel between her parents. However, she denied that when her father returned, her mother went inside the house to bring water for him and she also denied that there was stove explosion. She admitted that she did not visit her mother when she was hospitalized. She admitted that Police have not recorded her statement prior to 20-05-2015 and that last ritual of her mother was performed by her father at Dhule. Rest all suggestions are denied.

CONCLUSION

17. On carefully going through the testimony of **PW3** Jyoti, child witness, we are of the opinion that the child has given very different version about background of the occurrence. Further, it is emerging from her cross-examination that Police have not recorded her statement prior to 20-05-2015 and she has admitted to that extent, therefore, there is possibility that she has not deposed on her own. Further, her evidence shows that while she and her grandmother were outside in the courtyard, her parents were inside. We have also accepted both the dying declarations to be worthy of credence. In both the dying declarations, role of appellant has categorically come on record. Therefore, even if we discard evidence of child witness, still there are dying declarations, which are not only consistent but are also shown to be voluntary, truthful and inspiring confidence. Therefore, there is no hurdle in accepting the dying declarations for recording the guilt of appellant.

18. We have gone through the rulings cited by the learned Counsel for the appellant. The facts in the present case are distinct. Therefore, said rulings cannot be taken recourse to.

19. It is rightly pointed out by the learned Counsel for the appellant that learned Trial Judge has gone overboard by imposing sentence of suffering life imprisonment till natural death.

20. Very recently, the Hon'ble Apex Court in the case of ***Narendra Singh @ Mukesh @ Bhura v. State of Rajasthan; 2022 LiveLaw (SC) 247*** has held that "Sessions Court is not empowered to extend tenure of imprisonment beyond what is provided in the Statute". Punishment prescribed for offence punishable under Section 302 of the IPC has not been amended or enhanced. Wordings used in the Statute are required to be adopted.

21. Therefore, interference only to that extent is necessary and so, we modify the sentence part of the impugned judgment. Accordingly, we proceed to pass following order:

ORDER

- (i) Criminal Appeal No.168 of 2017 is hereby partly allowed.

(ii) The conviction awarded to the appellant Bapu Bajrang Patil by the Additional Sessions Judge, Dhule in Sessions Case No.95 of 2015 on 29-09-2016 for the offence punishable under Section 302 of the IPC is hereby maintained.

(iii) However, the sentence imposed on appellant Bapu Bajrang Patil “*to suffer life imprisonment for the entire remaining of his life*” is hereby modified and now appellant is sentenced to suffer “*imprisonment for life*” for the said offence.

(iv) Rest of the order passed by the Additional Sessions Judge, Dhule is maintained.

(v) Fees of appointed Counsel for appellant is quantified @ Rs.10,000/- to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)