

\200\*  
Crl.A.No. 608 OF 2001  
.UP 10 2; Draft, smtst; -n -PA4 -dFX-NORMAL -y -e; dumbp  
L.....T.....T.....T.....T.....T.....T.....T.....T.....T.....T.....R  
ITEM NO. 101 PH COURT NO. 6 SECTION IIA

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

CRL. APPEAL No.(s) 608/2001

LAXMAN Appellant (s)

Versus

STATE OF MAHARASHTRA Respondent (s)

( With Office Report)

Date:24.7.2002. This/These Appeal(s) was/were called  
on for hearing today.

CORAM:

HON'BLE MR. JUSTICE M.B. SHAH  
HON'BLE MR. JUSTICE BISHESHWAR PRASAD SINGH  
HON'BLE MR. JUSTICE H.K. SEMA

For the Appellant (s)  
Mr.S. Muralidhar,Adv. (A.C)

For the Respondent (s)  
Mr.Ravi Adsure,Adv.,  
Mr.V.N. Raghupathy,Adv.

Upon hearing counsel the Court made the following  
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J  
.SP2

Learned counsel for the petitioner argued the matter  
for about half an hour.

Learned counsel for the appellant submitted that the  
High Court committed error in relying upon the evidence of  
learned Judicial Magistrate who has recorded the dying  
declaration because the dying declaration does not contain  
any certificate by the doctor that the patient was conscious  
and was in a fit state of mind at the time of recording the  
statement. For this purpose, he placed reliance on the  
decision rendered by this Court in Paparambaka Rosamma &@  
CCCCCCCCCCCCCCCCCCCCCCCCCCCC

Ors. vs. State of A.P. (1999) 7 SCC 695 particularly@  
CCCC CCCCCCCCCCCC  
paragraphs 8 and 9 wherein this Court has observed as  
under:-

.....L.....I.....T.....T.....T.....T.....J.....  
.SP1

"In our opinion, the certificate  
appended to the dying declaration at the  
end by Dr. Smt. K Vishnupriya Devi

(PW-10) did not comply with the requirement  
inasmuch as she has failed to certify that  
injured was in a fit state of mind at the  
time of recording the dying declaration.

The certificate of the said expert at the end only says that "patient is conscious while recording the statement". In view of these material omissions, it would not be safe to accept the dying declaration (Ex.P-14) as true and genuine and as made when the injured was in a fit state of mind."

.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J  
.SP2

As against this, learned counsel appearing for the State-respondent referred to the decision of this Court in Koli Chunilal Savji & Anr. vs. State of Gujarat (1999) 9@@  
CC  
SCC 562 wherein the Court observed as under:-

.....L.....I.....T.....T.....T.....T.....T.....J.....  
.SP1

"It further appears from her evidence that though there has been no endorsement on the dying declaration recorded by the Magistrate with regard to the condition of the patient but there has been an endorsement on the police yadi, indicating that Dhanuben was fully conscious. In view of the aforesaid evidence of the Magistrate and in view of the endorsement of the doctor on the police yadi and no reason having been ascribed as to why the Magistrate would try to help the prosecution, we see no justification in the comments of Mr.Keswani that the dying declaration should not be relied upon in the absence of the endorsement of the doctor thereon."

.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J  
.SP2

It appears to us that merely not recording of a certificate by a doctor on a dying declaration would not be a ground for discarding the dying declaration which is recorded by an independent Judicial Magistrate. Under the law even oral dying declaration is admissible in evidence. However, because of the conflicting decision rendered by three Judges Bench, question requires to be resolved by a larger Bench. Hence, the matter may be placed before Hon'ble Chief Justice for appropriate direction.

.SP1

(Vijay Kumar Sharma)  
Court Master

(Janki Bhatia)  
Court Master