

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 427 OF 2007

State of Rajasthan ... Appellant
Versus
Shravan Ram & Anr. ... Respondents

J U D G M E N T**K.S. Radhakrishnan, J.**

1. This is an appeal by the State of Rajasthan against the Judgment in D.B. Criminal Appeal No. 124 of 2001 passed by the High Court of Rajasthan. The Additional Sessions Judge convicted the accused persons under Section 302, IPC and sentenced them for life imprisonment with fine which was reversed by the High Court and acquitted the accused persons.

2. The prosecution case is as follows:

Guddi, the deceased, was admitted in the hospital on 11.09.1998 with ninety nine per cent burn injuries. *Parcha*

Bayan (Ex.P14A) of the deceased was recorded by ASI, Ram Kishan and signed by SHO Mohan Lal PW13 in the hospital. On the basis of the said *Parcha Bayan*, FIR No. 300/98 was registered at police station Madanganj (Ajmer) against the accused persons under Section 307, IPC. During treatment, Guddi died at about 10AM on the same day and the case was converted into Section 302, IPC. During the course of investigation, both the accused persons were arrested on 12.09.1998, first accused is the father-in-law and second accused is the husband. The accused persons denied the charges and the case went to trial. On the side of the prosecution 14 witnesses were examined. The Additional Sessions Judge, placed considerable reliance on the dying declaration stated to have been made before PW 3 Prem Chand, a neighbour which find a place in the statement (Ex. P6) made by him to the police under Section 161 of Cr.P.C. PW3 has stated that the deceased had raised hue and cry after the burn injuries and abused the father-in-law - Sharvan Ram and based on the evidence of PW3 and his 161 statement, the Session Court found the accused persons guilty.

3. Following are the circumstances which weighed with the Additional Sessions Judge:

- (i) That Smt. Guddi, aged 19 years died after two years of her marriage due to 99% burn injuries after pouring kerosene on her enlightening match stick, therefore the death is homicidal.
- (ii) Deceased was in the custody of accused appellants and simply on account of going outside the house were the 'occurrence took place' custody will not be ceased.
- (iii) PW1 Nathu Lal (father), PW2 Kailash (uncle) and PW13 Smt. Suraj Devi (mother) of the deceased in their statements have deposed that Smt. Guddi was not allowed by the accused appellants to go to her matrimonial home.
- (iv) The version of Prem Chand, PW3 in his statement under Section 161 Cr.P.C. was considered as dying declaration and not the *Parcha Bayan*. Reliance was not placed by Additional Sessions Judge on *Parcha Bayan* of deceased.
- (v) That the previous and subsequent conduct of accused appellants was not satisfactorily explained in their statements under Section 313 Cr.P.C as required under Section 8 of the Evidence Act.
- (vi) Since the death was caused in the custody of the accused, therefore, the accused were also

responsible for proving the fact of burn which was specifically within their knowledge as required under Section 106 of the Indian Evidence Act and further according to Section 114 of the Indian Evidence Act presumption has to be drawn against accused appellants.

4. Shri Abhishek Gupta, learned counsel appearing for the respondents submitted that the High Court has rightly held that it is not safe to base conviction on the statement of PW 3 - Prem Chand recorded under Section 161 Cr.P.C., who was declared hostile. Further, it was also pointed out that in the statement under Section 161 Cr.P.C., PW3 had not named the second accused - Pappu Lal, husband of the deceased. Further, it was also pointed out that PW4 Smt. Choti and PW5 Narayan, who are neighbours, did not disclose the cause of death and have not mentioned the names of any of the accused persons in their evidence. Therefore, the dying declaration made before Prem Chand remained uncorroborated and the High Court has rightly held that no reliance could be placed on uncorroborated dying declaration. Learned counsel, therefore, submitted that the judgment of the High Court calls for no interference.

5. Shri Shoran Mishra, learned counsel appearing for the State submitted that the High Court has committed an error in not placing reliance on the evidence of PW3 and the statement made by him before the Police under Section 161 Cr.P.C., wherein the name of the second accused has been mentioned. Learned counsel also submitted that the High Court has failed to notice the fact that the deceased was in the custody of the respondents and therefore the burden of explaining the fact of burning is on the accused persons. Further, they have failed to provide any explanation when examined under Section 313 Cr.P.C. Learned counsel also pointed out that the High Court has not properly appreciated the evidence by PW1 - Nathu Lal (father of the deceased), PW2 - Kailash (uncle of the deceased) and PW14 - Suraj Devi (mother of the deceased). PW14 in her deposition stated that the deceased father in law used to say that Guddi is his wife and she had deposed that her daughter had told if the above facts were disclosed she would be killed by burning. Learned counsel, therefore, submitted that the evidence of PW1, PW2 and PW14 coupled with the statement made by PW3 would establish the guilt of the respondents and the trial court has rightly convicted them.

6. We notice that there is no eye-witness to the occurrence and the entire case hinges upon few alleged dying declarations made by the deceased and circumstantial evidence. PW11 - Dr. P.C. Patni conducted the autopsy and gave report Ex.P14 in which it is stated that the deceased had 99% burn injuries. Post mortem was conducted by members of the board and in their opinion cause of death was hypovolumic shock as a result of ante-mortem burn and the death had occurred within 24 hours and there was no evidence of suicide or accidental fire and therefore the case was homicidal.

7. We are in this case concerned with three dying declarations which are as follows:

- (i) ASI Kishan recorded *Parcha Bayan* of the deceased which was signed by PW13 Mohan Lal in the presence of the doctor who also signed the same. Further, the accused also stated to have affixed his thumb impression.
- (ii) Dying declaration stated to have been made on 11.09.1998 , signed by the Sub-Divisional Magistrate but neither the said dying declaration had been exhibited nor the Sub-Divisional Magistrate had been produced in evidence.

- (iii) Dying declaration, as made by the deceased, before PW 3, Prem Chand, which had been stated by him in his statement under Section 161, Cr.P.C.

8. We find only two dying declarations are on record, the second one mentioned above was not brought out in evidence. *Parcha Bayan* of the deceased, based on which the case was registered reads as follows:

"I stay in Maliyon ki Dhani Madanganj. Today morning at around four-five, I had gone from home to near the drain adjacent Shivji Temple to ease myself and I was easing myself when at that time a person wearing white pant and shirt came. And in his hand there was a kerosene can, and poured over me. And lighting a match poured over me. My terecot clothes immediately caught fire. I fell in the drain and coming out of the drain reached the house being inflamed and narrated the whole incident to the family members. I did not recognize the person. I being inflamed fell in the drain and coming from the drain came being inflamed and narrated the whole incident to the family members, who have brought me to the hospital, my marriage took place two years back."

The third dying declaration stated to have been made by the deceased before PW3 – Prem Chand was referred to in Part A to B of Ex.P6 reads as follows:

“She was a woman who shouting at the site and was abusing her father in law Shravan Ram that you be doomed you ran away setting me on fire.”

9. We may now examine, whether statement of PW3 – Prem Chand recorded under Section 161, Cr.P.C., marked as Ex.P6 could be accepted as a dying declaration, wherein it was stated by him that the deceased was raising hue and cry and was abusing her father in law for ablazing her. PW3 was declared as hostile. Further, PW4 and PW5, the neighbours, who have stated to have seen the deceased in a burning state and raising hue and cry, neither disclosed the cause of death nor mentioned the names of any of the accused persons. Consequently, the dying declaration made by Prem Chand remained uncorroborated. It is trite law that it is unsafe to base reliance on the statement made under Section 161 Cr.P.C. as dying declaration without any corroboration. Although corroboration as such is not essential but it is expedient to have the same, in order to strengthen the evidentiary value of

declaration. This court in **Arvind Singh v. State of Bihar** (2001) 6 SCC 407 while dealing with the case of oral dying declaration stated as follows:

“Dying declaration shall have to be dealt with care and caution. Corroboration is not essential but it is expedient to have the same, in order to strengthen the evidentiary value of declaration. Independent witnesses may not be available but there should be proper care and caution in the matter of acceptance of such a statement as trustworthy evidence.”

10. This Court in **Bhajju Alias Karan Singh v. State of Madhya Pradesh** (2012) 4 SCC 327 while dealing with admissibility of dying declaration held as follows:

“The law is well settled that a dying declaration is admissible in evidence and the admissibility is founded on the principle of necessity. A dying declaration, if found reliable, can form the basis of a conviction. A court of facts is not excluded from acting upon an uncorroborated dying declaration for finding conviction. The dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence. It has to be judged and appreciated in light of the surrounding circumstances and its weight determined by reference to the principle

governing the weighing of evidence. If in a given case a particular dying declaration suffers from any infirmity, either of its own or as disclosed by the other evidence adduced in the case or the circumstances coming to its notice, the court may, as a rule of prudence, look for corroboration and if the infirmities are such as would render a dying declaration so infirm that it pricks the conscience of the court, the same may be refused to be accepted as forming basis of the conviction.”

11. Applying the above legal principles and examining the facts on record, we are of the view that no reliance could be placed on the statement made by PW3 - Prem Chand under Section 161 Cr.P.C. before the police in the absence of any corroboration. Over and above, PW3 has himself turned hostile.

12. We will now deal with the question whether the dying declaration stated to have been recorded by ASI Ramkishan, signed by SHO Mohan Lal (PW13) as well as Dr. Anil Kumar Soni would be sufficient to base the conviction.

13. First we will examine whether P14-A, *Parcha Bayan*, which was converted into dying declaration is made in consonance with Rule 6.22 of the Rajasthan Police Rules, 1965. Rule 6.22 of the Rajasthan Police Rules, 1965 reads as follows:

“Dying Declarations - (1) A dying declaration shall, whenever possible, be recorded by a Magistrate.

(2) The person making the declaration shall, if possible, be examined by medical officer with a view to ascertaining that he is sufficiently in possession of his reason to make a lucid statement.

(3) If no Magistrate can be obtained, the declaration shall, when a gazetted police officer is not present, be recorded in the presence of two or more reliable witnesses unconnected with the police department and with the parties concerned in the case.

(4) If no such witnesses can be obtained without risk of the injured person dying before his statement can be recorded, it shall be recorded in the presence of two or more police officers.

(5) A dying declaration made to a police officer should, under Section 162, Code of Criminal Procedure, be signed by the person making it.”

14. We notice, in this case, the above mentioned Rule is substantially complied with, still in our view no reliance could

be placed due to lack of corroboration over and above the fact that even in Ex. P14-A, the deceased had not named the accused persons. What she stated is that she did not recognize the person who has abused her. Therefore, in the absence of any corroboration and also not naming any of the accused persons in Ex.P14A, no reliance could be placed on the same even though the provision of Rule 6.22 of the Rajasthan Police Rules, 1965 has been complied with.

15. This Court had occasion to consider the scope of multiple dying declarations in **Smt. Kamla v. State of Punjab** (1993) 1 SCC 1, this Court held as follows:

“A dying declaration should satisfy all the necessary tests and one such important test is that if there are more than one dying declaration they should be consistent particularly in material particulars.”

16. In **Kishan Lal v. State of Rajasthan** (2000) 1 SCC 310, this Court held as follows:

“Examining these two dying declarations, we find not only that they gave two conflicting versions but there is inter se discrepancies in the depositions of the witnesses given in support of the other dying

declaration dated 6.11.1976. Finally, in the dying declaration before a Magistrate on which possibly more reliance could have been placed the deceased did not name any of the accused. Thus, we have no hesitation to hold that these two dying declarations do not bring home the guilt of the appellant. High Court, therefore, erred in placing reliance on it by erroneously evaluating them.”

17. In **Lella Srinivasa Rao v. State of A.P.** (2004) 9 SCC 713, this Court had occasion to consider the legality and acceptability of two dying declarations. Noticing the inconsistency between the two dying declarations, the Court held that it is not safe to act solely on the said declarations to convict the accused persons.

18. In **Amol Singh v. State of Madhya Pradesh** (2008) 5 SCC 468, this Court interfered with the order of sentence noticing inconsistencies between the multiple dying declarations. 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 but the statement should be consistent throughout. 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 and 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.

19. In **State of Andhra Pradesh v. P. Khaja Hussain** (2009) 15 SCC 120, this Court rejected the appeal filed against the acquittal holding that it was not a case where the variation between the two dying declarations was trivial in nature.

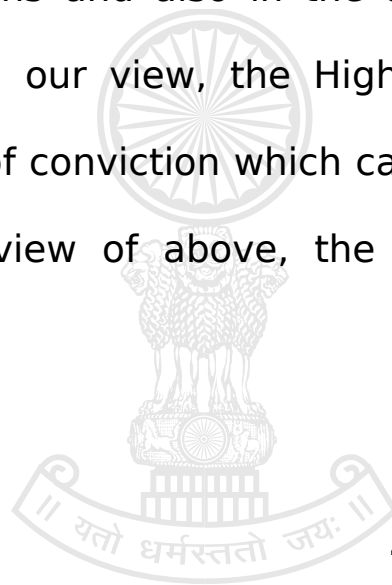
20. In **Sharda v. State of Rajasthan** (2010) 2 SCC 85, this Court has dealt with three dying declarations. Noticing inconsistencies between dying declarations, this Court set aside the sentence ordered by Sessions Judge as well as High Court and held as follows:

“Though a dying declaration is entitled and is still recognised by law to be given greater weightage but it has also to be kept in mind that the accused had no

chance of cross-examination. Such a right of cross-examination is essential for eliciting the truth as an obligation of oath. This is the reason, generally, the court insists that the dying declaration should be such which inspires full confidence of the court of its correctness. The court has to be on guard that such statement of the deceased was not as a result of either tutoring, prompting or 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 aforesaid requirement and also to the fact that declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration."

21. We have gone through both the dying declarations and there are not only material contradictions in both the declarations but also inter se discrepancies in the depositions of the witnesses as well. In the first dying declaration recorded by ASI, signed by PW13, there is no mention of the names of any of the accused persons and the deceased had stated that she could not recognize the person who set her ablaze even though the declaration was in consonance with Rule 6.22 of the Rajasthan Police Rules, 1965.

22. So far as the statement of PW3 - Prem Chand recorded under Section 161, Cr.P.C. marked as Exh. P6 is concerned, the deceased was only abusing her father in law and that was not even corroborated by PW4 or PW5 and PW3 himself turned hostile. Due to discrepancies and contradictions between the two dying declarations and also in the absence of any other reliable evidence, in our view, the High Court is justified in reversing the order of conviction which calls for no interference by this Court. In view of above, the appeal is, therefore, dismissed.



.....J.
(K.S. Radhakrishnan)

JUDGMENT

.....J.
(Dipak Misra)

New Delhi,
May 1, 2013