REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No(s). 1025/2011

MADAN @ MADHU PATEKAR ...Appellant(s)

VERSUS

THE STATE OF MAHARASHTRA ...Respondent(s)

JUDGMENT

N.V. RAMANA, J.

1. This appeal by special leave is filed by the appellant aggrieved by the judgment of the High Court of Judicature at Bombay, dated June 8, 2010 in Criminal Appeal No. 462 of 1992 whereby the High Court confirmed the judgment of the trial Court in Sessions Case No. 91 of 1992.

2. The case of prosecution, in brief, is that the accused appellant herein had illicit relationship with Latabai (deceased)

for the past five years prior to the date of incident and on 13th December, 1991 when the deceased refused to cook food for the accused, he got annoyed and burnt her alive by pouring kerosene oil. Hearing hue and cry of the dececased, one Meerabai and Satyabhamabai (PW 7) rushed to save her. The appellant also joined them in extinguishing the fire. Seeing the gathering of neighbours, in that commotion the accused ran away from the scene. The victim was then taken by the neighbours to the Civil Hospital, Nashik where the appellant was also admitted. Jayaprakash Chavan, Special Judicial Magistrate (PW1) recorded dying declaration of Latabai as also the statement of the appellant. On the same day, i.e. 14.12.1991, Nivrutti Baburao Godhade (PW12), Police Head Constable has also recorded dying declaration of Latabai (deceased).

3. Crime No. 76/91 was registered by PSI Jadhav (PW11) against the accused. Thereafter spot panchanama was prepared, seized incriminating material such as kerosene oil tin, match box, pieces of saree, blouse etc. from the scene of offence and recorded statements of witnesses. On 16.12.1991, the victim Latabai succumbed to the burn injuries and the accused was arrested on 19.1.1992. In furtherance of investigation, postmortem on the body of the deceased was conducted,

chemical examiner's report (Ext. 32) was obtained and the accused was charge sheeted. As he pleaded not guilty, learned Sessions Judge has conducted a full fledged trial resulting in the conviction of the accused/appellant for the offence punishable under Section 302 of IPC and sentenced him to suffer life imprisonment and to pay a fine of Rs.100/-, in default, to further suffer imprisonment for a period of one month in addition.

4. The appellant—accused carried the matter by way of appeal to the High Court. The High Court came to the conclusion that the prosecution has proved the case beyond reasonable doubt regarding the complicity of the accused in causing the unnatural death of Latabai by burn injuries. Accordingly, the High Court dismissed the appeal and upheld the conviction and sentence imposed by the learned Additional Sessions Judge. Having aggrieved by the concurrent findings of the Courts below, the accused—appellant is in appeal before us.

5. We have heard the learned counsel on either side and perused the material on record.

6. Learned counsel appearing for the appellant has made a strenuous effort to convince the Court that the prosecution has not been able to establish the fact that the petitioner had poured

the kerosene on the deceased. There was no eyewitness to the incident, as a matter of fact the accused himself was a victim with 40% burn injuries while trying to save the deceased. On the date of incident, upon lighting herself the deceased made a hue and cry, when the accused heard the shouts of Latabai he barged into the house to save her but the deceased after seeing the accused hugged him, with which he also had sustained burn injuries. Learned counsel further argued that the alleged dying declarations are not voluntarily made by the deceased, they are fabricated with an intention to foist a false case and implicate the appellant. He prayed that in spite of several doubts on the prosecution case, such as, how the victim with 86% burn injuries could give dying declaration and whether the motive has been proved and also whether the guilt of the accused has been established beyond reasonable doubt, the Courts below have failed to perceive the matter in correct manner and perversely passed the order of conviction against the accused—appellant which has to be set aside.

7. Per contra, the learned counsel appearing on behalf of the State submitted that the dying declaration is the basis for conviction. The prosecution, by adducing cogent and reliable evidence, has proved the guilt of the accused beyond reasonable

doubt and hence the order under appeal needs no interference from this Court.

8. Having given our consideration to the submissions made by the learned counsel on either side and going by the material on record, we are of the view that the Courts below have come to the concurrent conclusion only after meticulous consideration of the two dying declarations of the deceased which were recorded by the Special Executive Magistrate (Annexure P-1) and PW 12 – Head Constable (Annexure P-3) respectively which are duly certified by the Doctor. It is evident from the dying declarations that the deceased on the previous night i.e. on the date of incident, had a quarrel with the accused over cooking of meals and the annoyed appellant poured kerosene and set her on fire with matchstick. Both the dying declarations are consistent and in clear terms points at the guilt of the accused – appellant that he has set the lady on fire resulting in her death. The contention that the dying declarations are not voluntarily made, cannot be given weightage for the reason that the Special Executive Magistrate has recorded the dying declaration in accordance with law after obtaining due permission from the Doctor. The other dying declaration recorded by the Constable is also consistent in respect of revelations and points at the guilt of

the accused.

9. Before we analyse the case at hand it would be important to note certain aspects of dying declaration. Although we can trace the admissibility of the dying declaration under Sections 6, 7 and 32 of Indian Evidence Act that the rule of admissibility of dying declaration can be traced to ***King v. Woodcock***, (1789) 168 ER 352, which is considered to be the most important case law on the aspect of dying declaration, as in that case the declaration of deceased therein (Silvia) was the only evidence as to what happened to her, came from Silvia herself. The Court therein categorically justified the usage and importance of dying declaration to be "*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 mind is induced by the most powerful considerations to speak the truth.*" The court further held that "*a situation so solemn, and so awful, is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a Court of Justice*."

10. The rule of admissibility of dying declaration is no more *res integra*. In the adjudication of a criminal case, dying

declaration plays a crucial role. A dying declaration made by a person as to cause of his/her death or as to any of the circumstances which resulted in his/her death, in cases in which cause of death comes in question, is relevant under Section 32 of the Evidence Act. It has been emphasized number of times that dying declaration is an exception to the rule against admissibility of hearsay evidence. The whole development of the notion that the dying declaration, as an exception to the hearsay rule, is based on the formalistic view that the determination of certain classes of evidence as admissible or inadmissible and not on the apparent credibility of particular evidence tendered.

11. We are aware of the fact that the physical or mental weakness consequent upon the approach of death, a desire of self-vindication, or a disposition to impute the responsibility for a wrong to another, as well as the fact that the declarations are made in the absence of the accused, and often in response to leading questions and direct suggestions, and with no opportunity for cross-examination: all these considerations conspire to render such declarations a dangerous kind of evidence. In order to ameliorate such concerns, this court has cautioned in umpteen number of cases to have a cautious approach when considering a conviction solely based on dying

declaration. Although there is no absolute rule of law that the dying declaration cannot form the sole basis for conviction unless it is corroborated, the courts must be cautious and must rely on the same if it inspires confidence in the mind of the Court [See: ***Ram Bihari Yadav*** Vs. ***State of Bihar & Ors.*** (1998) 4 SCC 517 and ***Suresh Chandra Jana & Ors.*** Vs. ***State of West Bengal &Ors.,*** 2017 (8) SCALE 697].

12. Moreover, this court has consistently laid down that a dying declaration can form basis of conviction, if in the opinion of the Court, it inspires confidence that the deceased at the time of making such declaration, was in a fit state of mind and there was no tutoring or prompting. If the dying declaration creates any suspicion in the mind of Court as to its correctness and genuineness, it should not be acted upon without corroborative evidence [See Also: ***Atbir*** Vs. ***Government of NCT of Delhi***, 2010 (9) SCC 1, ***Paniben*** Vs. ***State of Gujarat,*** 1992 (2) SCC 474 and ***Panneerselvam*** Vs. ***State of Tamilnadu,*** 2008 (17) SCC 190].

13. Applying the settled legal position to the factual matrix of the case, the dying declaration of the deceased (Ext.10) was recorded by the Special Executive Magistrate (PW 1) on 14.12.1991 after obtaining the fitness condition of the victim by

the duty Medical Officer who issued the fitness certificate after examining the patient. There cannot be suspicion over the genuineness of the dying declaration as the deceased has described the incident and declared the name of the accused to be the culprit in clear and categorical terms. In that view of the matter, we have no hesitation to say that the dying declaration of the deceased in the instant case can form the sole basis for conviction of the accused—appellant.

14. Under the circumstances, even though some of the prosecution witnesses turned hostile and minor discrepancies in the prosecution case, they do not have any bearing on the result of the present case for the simple reason that the Courts below have thoroughly assessed each circumstance and after careful examination of the facts only recorded their concurrent findings. As observed by this Court in ***Bharwada Bhoginbhai Hirjibhai*** Vs. ***State of Gujarat,*** (1983) 3 SCC 217, a concurrent finding of fact cannot be reopened in an appeal by special leave unless it is established: (1) that the finding is based on no evidence or (2) that the finding is perverse, it being such as no reasonable person could have arrived at even if the evidence was taken at its face value or (3) the finding is based and built on inadmissible evidence, which evidence, if excluded from vision, would negate

the prosecution case or substantially discredit or impair it or (4) some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked, disregarded, or wrongly discarded.

15. Whereas the case on hand does not fall under any of the aforementioned categories, particularly, when the evidences of PWs 1 and 12 gets corroborated with the evidence of PW 8 (Dr. Kotkar) who confirmed his endorsement on the dying declaration (Ext. 10) which formed basis for the conviction of the accused. In such circumstances, we do not find the conclusion arrived at by the trial Court as well as the High Court as being perverse. The Courts below have taken the plausible view that the guilt of the accused has been proved beyond reasonable doubt as the dying declarations recorded by PWs 1 and 12 did not suffer from any infirmity and they inspire confidence. Thus, for all the foregoing reasons, we do not see any ground which requires our interference with the concurrent findings of fact recorded by the Courts below. The appeal, therefore, fails and deserves to be dismissed.

16. In the end, learned counsel appearing for the appellant made a submission that the appellant is not a

hard-core criminal, he is a poor mason having wife and children and also suffered 40% burn injuries. He, therefore, requested the Court that the case of the appellant can be considered sympathetically by the Government for remission. In our view, it is for the Government either to consider the representation of the appellant or not. But at this stage we cannot grant any relief to the appellant on that count.

17. The appeal stands dismissed accordingly.

.....J.
(N.V. RAMANA)

.....J.
(S. ABDUL NAZEER)

NEW DELHI,
FEBRUARY 6, 2018.