

Telangana High Court

Mandala Murali vs The State Of Ap., Rep By Its P.P on 11 February, 2022

Bench: Satish Chandra Sharma, Abhinand Kumar Shavili

THE HON'BLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA

AND

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

CRIMINAL APPEAL No.1023 of 2013

JUDGMENT: (Per the Hon'ble the Chief Justice Satish Chandra Sharma)

1.

The present criminal appeal is arising out of a judgment dated 10.01.2011 in S.C.No.282 of 2008 on the file of the learned IV Additional Sessions Judge, Ranga Reddy District, whereby the appellant/accused was convicted for the offence punishable under Sections 498-A and 302 IPC. The appellant/accused has been sentenced to undergo life imprisonment and to pay a fine of Rs.500/- with a default clause to undergo three months simple imprisonment for the offence punishable under Section 302 IPC. He has also been sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.100/- with a default clause to undergo simple imprisonment for one month for the offence punishable under Section 498-A IPC.

2. The prosecution case, in short, is that the marriage of the appellant/accused with the deceased Saritha took place on 08.06.2007 as per Hindu customs and rights. At the time of marriage, the parents of the deceased gave Rs.30,000/-, six tulas of gold ornaments and household articles towards dowry and also promised to pay a sum of Rs.20,000/- after some time. The appellant/accused was working as an auto rickshaw driver and on 30.12.2007, he came back to his house and while his wife was in the bathroom, he poured kerosene upon her and lit fire with an intention to kill her. She came running out of the house and P.W.3 - Mandala Anjamma, P.W.4 - Borra Janardhan, and P.W.5 - Mandala Jangaiah, came out from their houses and extinguished the flames. The deceased was taken to Osmania General Hospital and she expired on 02.01.2008 at about 8.30 pm. A crime was registered as FIR No.172 of 2007 dated 31.12.2007. The police, after investigating the crime, filed a charge sheet for the offence under Sections 498-A and 302 IPC and the learned Magistrate took cognizance in PRC No.17 of 2008. Thereafter, the matter was committed for trial and the appellant/accused pleaded not guilty.

3. The prosecution has examined as many as 16 witnesses besides marking 17 documents i.e., EXS.P1 to P17 and two material objects i.e., M.O.1 and M.O.2.

Before the trial Court, P.W.1 - Kondey Kamalamma, the mother of the deceased, stated that the deceased was her fourth daughter and the marriage of the deceased took place about two and half years back, the deceased and the appellant/accused were living happily and the deceased died because of burn injuries. P.W.1 - Kondey Kamalamma, has not supported the prosecution. P.W.2 - Kondey Swamy, the father of the deceased, also stated on the same lines and has not supported the

prosecution. P.W.3 - Mandala Anjamma, and P.W.4 - Borra Janardhan, who are neighbours of the appellant/accused have stated that they took the deceased to Osmania General Hospital for treatment and again they also did not support the prosecution story and they turned hostile. P.W.5 - Mandala Jangaiah and P.W.6 - Bungani Jangaiah, who were circumstantial witnesses to the incident, also did not support the case of the prosecution. P.W.7 - Aluvula Narsimha, and P.W.8 - Pilli Balraj, who were present at the time of preparation of scene observation report (EX.P.7), rough sketch (EX.P.8) and seizure of empty kerosene tin of 5 litre capacity (M.O.1) and burnt cloth piece of the deceased (M.O.2), have identified their signatures on EXS.P.7 and P.8. P.W.9 - Mogila Pushpa, who was present at the time of conducting inquest over the dead body of the deceased, opined that the deceased died due to burn injuries. P.W.11 - Mohd.Ashfaq Ali, the Incharge Tahsildar of Maheswaram Mandal, has stated before the trial Court that on 03.01.2008 he conducted inquest over the dead body of the deceased on the requisition of the police in the presence of P.W.9. P.W.10

- Alwala Prabhakar, panch witness in whose presence the appellant/accused has made a confessional statement, did not support the case of the prosecution. P.W.12 - Dr. Ravinder Goud, has conducted the autopsy over the dead body and he has opined that the deceased died on account of burns.

4. The statements of P.W.12 and P.W.10 and EXS.P.10 and P.11 make it very clear that the deceased sustained burn injuries in the house of the appellant/accused on 30.12.2007 and during the night she was shifted to Osmania General Hospital and she died on 02.01.2008 at about 8.30 pm while undergoing treatment on account of burn injuries.

5. In the present case, as most of the witnesses have turned hostile, the conviction is based upon the Dying Declaration of the deceased. The Dying Declaration is on record. In the instant case, P.W.16 - D.Venkataramana, the Magistrate who has recorded the Dying Declaration of the deceased in Osmania General Hospital, has stated before the trial Court that a requisition (EX.P.16) dated 31.12.2007 was made by the Station House Officer of Maheswaram Police Station through the Head Constable 574 - Ibrahim, with an endorsement by the doctor of Osmania General Hospital to record the Dying Declaration of the deceased. He received the requisition at about 8.15 pm and immediately rushed to the hospital and reached there by 9.00 pm. The duty doctor certified the condition of the patient who was conscious and in a fit state of mind to give the Dying Declaration. The duty doctor has given a certificate to that effect and thereafter, the Dying Declaration was recorded verbatim. The Dying Declaration, which is on record, as EX.P.17 was read over and the contents were again told to the deceased and by 9.15 pm the entire formality was over. The certificate of the doctor is also on record and it makes it very clear that the patient was conscious, coherent and in a fit state of mind at the time of when the Dying Declaration was recorded. The doctor has also made an endorsement that he was present at the time when the Dying Declaration was recorded.

6. The deceased, in the Dying Declaration, has categorically stated that when she went into the bathroom, her husband followed her and poured kerosene on her body and lit fire due to which she sustained burn injuries. She has also stated that her husband used to harass her mentally and physically and he used to demand additional dowry.

7. Much has been argued by learned counsel for the appellant/accused before this Court over the Dying Declaration and it has been argued that conviction cannot be based upon the Dying Declaration alone. It has been stated that the parents of the deceased have given a clean chit to the appellant/accused and once there was no complaint from the parents of the deceased in respect of demand of additional dowry, the solitary piece of evidence, which is the Dying Declaration, could not have been looked into and could not have been made the basis for convicting the appellant/accused.

8. This Court has carefully taken into account the arguments canvassed by the learned counsel for the parties. Reliance has been placed upon the judgments delivered in the case of *Rasheed Beg v. State of Madhya Pradesh*¹ and *Atbir v. Govt. of NCT Delhi*².

9. In the case of *Rasheed Beg* (supra), two Dying Declarations were recorded and there was improvement in the subsequent Dying Declaration which was recorded by the doctor and as there was improvement in the subsequent Dying Declaration and certain discrepancies in both the Dying Declarations, the benefit was given to the accused therein.

10. It has been argued that the Court should be very careful and cautious in convicting a person solely on the basis of Dying Declaration and there cannot be any absolute law that the Dying Declaration can be the sole basis of conviction, unless it is corroborated.

11. In the present case, the undisputed facts also make it very clear that the deceased died within six months after the marriage. It is true that the parents of the deceased have not made allegation about demand of dowry. However, the fact remains that the deceased at her death bed with burn injuries and who was in a fit state of mind has categorically stated that her husband has poured kerosene over her and lit fire with a intention to kill her. There is no reason as to why this Court should disbelieve the statement of a young lady AIR 1974 SC 332 (2010) 9 SCC 1 who was in senses while giving the Dying Declaration, that too before a Magistrate.

12. The Hon'ble Supreme Court in the case of *Poonam Bai v. Chhattisgarh*³ has summarised the principles relating to Dying Declaration especially when it is the sole basis for conviction. Paragraph 10 of the aforesaid Judgment is reproduced as under:-

"10. There cannot be any dispute that a dying declaration can be the sole basis for convicting the accused. However, such a dying declaration should be trustworthy, voluntary, blemishless and reliable. In case the person recording the dying declaration is satisfied that the declarant is in a fit medical condition to make the statement and if there are no suspicious circumstances, the dying declaration may not be invalid solely on the ground that it was not certified by the doctor. Insistence for certification by the doctor is only a rule of prudence, to be applied based on the facts and circumstances of the case. The real test is as to whether the dying declaration is truthful and voluntary. It is often said that man will not meet his Maker with a lie in his mouth. However, since the declarant who makes a dying declaration cannot be subjected to cross-examination, in order for the dying declaration to be the

sole basis for conviction, it should be of such a nature that it inspires full confidence of the court. In the matter on hand, since Ext. P-2, the dying declaration is the only circumstance relied upon by the prosecution, in order to satisfy our conscience, we have considered the material on record keeping in mind the well-established principles regarding the acceptability of dying declarations."

(2019) 6 SCC 145 Keeping in view the aforesaid Judgment, as in the present case the Dying Declaration is truthful, trustworthy, voluntary, blemishless and reliable, the question of discarding the same does not arise.

13. The Hon'ble Supreme Court in the case of Madan @ Madhu Patekar v. State of Maharashtra⁴ has dealt with the issue of Dying Declaration and has held that it can be the sole basis of conviction. Paragraphs 10, 11 and 12 of the aforesaid Judgment read as under:-

"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 emphasised 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 (2019) 13 SCC 464 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 v. State of Bihar*, (1998) 4 SCC 517 : 1998 SCC (Cri) 1085 and *Suresh Chandra Jana v. State of W.B.* (2017) 16 SCC 466 : (2018) 2 SCC (Cri) 187].

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 v. Govt. (NCT of Delhi) , (2010) 9 SCC 1:(2010) 3 SCC (Cri) 1110, Paniben v. State of Gujarat (1992) 2 SCC 474 : 1992 SCC (Cri) 403 and Panneerselvam v. State of T.N., (2008) 17 SCC 190 : (2010) 4 SCC (Cri) 496]."

In the light of the aforesaid Judgment, keeping in view the fact that the Dying Declaration was recorded by the learned Magistrate, the deceased has named the accused as culprit, the deceased at the time of recording the Dying Declaration was in full senses, there is no reason to disbelieve the Dying Declaration.

14. In the case of State of Rajasthan v. Ganwara⁵, the Hon'ble Supreme Court has again dealt with the issue of Dying Declaration, which was the sole basis for conviction. Paragraph 8 of the aforesaid Judgment is reproduced as under:-

"8. It is well settled and needs no reiteration at our hands that dying declaration can form the sole basis for conviction. At the same time, it is not the plurality of the dying declarations that adds weight to the prosecution case, but their qualitative worth is what matters. The settled legal principle is that dying declaration should be free from slightest of doubt and shall be of such nature as to inspire full confidence of the Court in its truthfulness and correctness. The Court must exercise great caution while considering the weight to be given to a dying declaration, particularly when there are more than one dying declaration."

In the light of the aforesaid Judgment and after careful consideration of the Dying Declaration, this Court is of the opinion that the trial Court has rightly convicted the appellant/accused.

15. The Hon'ble Supreme Court in similar circumstances, in the case of Vijay Mohan Singh v. State of Karnataka⁶ has held the person guilty for an offence under Sections 302 and 498-A IPC solely based upon the Dying Declaration. (2019) 13 SCC 687 (2019) 5 SCC 436

16. In the case of Atbir (supra), the Hon'ble Supreme Court in paragraphs 14 to 22 has held as under:-

"(A) Dying declaration

14. It is true that in the case on hand, conviction under Section 302 was based solely on the dying declaration made by Sonu @ Savita and recorded by the investigating officer in the presence of a doctor. Since we have already narrated the case of the prosecution which led to three deaths, eliminating the second wife and the children of one Jaswant Singh, there is no need to traverse the same once again. This Court in a series of decisions enumerated and analysed that while recording the dying declaration, factors such as mental condition of the maker, alertness of mind and memory, evidentiary value, etc. have to be taken into account.

15. In *Munnu Raja v. State of M.P.* [(1976) 3 SCC 104 : 1976 SCC (Cri) 376] this Court held: (SCC pp. 106-07, para

6) "6. It is well settled that though a dying declaration must be approached with caution for the reason that the maker of the statement cannot be subject to cross-examination, there is neither a rule of law nor a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated. "

It is true that in the same decision, it was held, since the investigating officers are naturally interested in the success of the investigation, the practice of the investigating officer himself recording a dying declaration during the course of an investigation ought not to have been encouraged.

16. In *Paras Yadav v. State of Bihar* [(1999) 2 SCC 126 :

1999 SCC (Cri) 104] this Court held that lapse on the part of the investigating officer in not bringing the Magistrate to record the statement of the deceased should not be taken in favour of the accused. This Court further held that a statement of the deceased recorded by a police officer in a routine manner as a complaint and not as a dying declaration can also be treated as dying declaration after the death of the injured and relied upon if the evidence of the prosecution witnesses clearly establishes that the deceased was conscious and was in a fit state of health to make the statement.

17. The effect of the dying declaration not recorded by the Magistrate was considered and reiterated in *Balbir Singh v. State of Punjab* [(2006) 12 SCC 283 : (2007) 1 SCC (Cri) 715] . Para 23 of the said judgment is relevant which reads as under: (SCC p. 289) "23. However, in *State of Karnataka v. Shariff* [(2003) 2 SCC 473 : 2003 SCC (Cri) 561] , this Court categorically held that there was no requirement of law that a dying declaration must necessarily be made before a Magistrate. This Court therein noted its earlier decision in *Ram Bihari Yadav v. State of Bihar* [(1998) 4 SCC 517 : 1998 SCC (Cri) 1085] wherein it was also held that the dying declaration need not be in the form of questions and answers. (See also *Laxman v. State of Maharashtra* [(2002) 6 SCC 710 : 2002 SCC (Cri) 1491] .)"

It is clear that merely because the dying declaration was not recorded by the Magistrate, by itself cannot be a ground to reject the whole prosecution case. It also clarified that where the declaration is wholly inconsistent or contradictory statements are made or if it appears from the records that the dying declaration is not reliable, a question may arise as to why the Magistrate was not called for, but ordinarily the same may not be insisted upon. This Court further held that the statement of the injured, in the event of her death may also be treated as FIR.

18. In *State of Rajasthan v. Wakteng* [(2007) 14 SCC 550 : (2009) 3 SCC (Cri) 217] the view in *Balbir Singh* case [(2006) 12 SCC 283 : (2007) 1 SCC (Cri) 715] has been reiterated. The following conclusions are relevant which read as under: (*Wakteng* case [(2007) 14 SCC 550 : (2009) 3 SCC (Cri) 217] , SCC p. 554, paras 14-15) "14. Though conviction can be based solely on the dying

declaration, without any corroboration the same should not be suffering from any infirmity.

15. While great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lie or to concoct a case so as to implicate an innocent person but the court has to be careful to ensure that the statement was not the result of either tutoring, prompting or a product of the imagination. It is, therefore, essential that the court must be satisfied that the deceased was in a fit state of mind to make the statement, had clear capacity to observe and identify the assailant and that he was making the statement without any influence or rancour. Once the court is satisfied that the dying declaration is true and voluntary it is sufficient for the purpose of conviction."

19. In *Bijoy Das v. State of W.B.* [(2008) 4 SCC 511 : (2008) 2 SCC (Cri) 449] this Court after quoting various earlier decisions, reiterated the same position.

20. In *Muthu Kutty v. State* [(2005) 9 SCC 113 : 2005 SCC (Cri) 1202] the following discussion and the ultimate conclusion are relevant which read as under: (SCC p. 120, paras 14-15) "14. This is a case where the basis of conviction of the accused is the dying declaration. The situation in which a person is on the deathbed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept veracity of his statement. It is for this reason that the requirements of oath and cross-examination are dispensed with. Besides, should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eyewitness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence.

15. 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 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."

21. The same view has been reiterated by a three-Judge Bench decision of this Court in *Panneerselvam v. State of T.N.* [(2008) 17 SCC 190 : (2010) 4 SCC (Cri) 496] and also the principles governing the dying declaration as summed up in *Paniben v. State of Gujarat* [(1992) 2 SCC 474 : 1992 SCC (Cri) 403] .

22. The analysis of the above decisions clearly shows that:

(i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.

(ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.

(iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

(iv) 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.

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

(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

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

(viii) Even if it is a brief statement, it is not to be discarded.

(ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.

(x) 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." In the aforesaid Judgment, after analysing the earlier Judgments, the Hon'ble Supreme Court has arrived at a conclusion that the Dying Declaration can be the sole basis of conviction if it inspires the full confidence of the Court and the deceased should be in a fit state of mind at the time of making the statement.

17. In the present case, the Dying Declaration is the sole basis for convicting the appellant/accused. The deceased was in a fit state of mind, the Dying Declaration is true and voluntary as it was recorded by the learned Magistrate and the Doctor has certified that the deceased was in a fit state of mind at the time of giving statement and therefore there is no reason to discard the Dying Declaration.

18. This Court, keeping in view the Judgment delivered in the case of Atbir (supra) and keeping in view the peculiar facts and circumstances of the case is of the opinion that the Dying Declaration, which is in existence is a material piece of evidence and can certainly be the sole basis of convicting the appellant/accused.

19. In the considered opinion of this Court, the trial Court was justified in convicting the appellant/accused. This Court does not find any reason to set aside the judgment of conviction and in the peculiar facts and circumstances of the case, the Criminal Appeal is dismissed.

The miscellaneous applications pending, if any, shall stand closed.

----- SATISH CHANDRA SHARMA, CJ
----- ABHINAND KUMAR SHAVILI, J

11.02.2022 vs/pln