

CASE NO.:
Appeal (crl.) 630 of 2005

PETITIONER:
RAVIKUMAR alias KUTTI RAVI

RESPONDENT:
STATE OF TAMIL NADU

DATE OF JUDGMENT: 22/02/2006

BENCH:
S.B. SINHA & P.P. NAOLEKAR

JUDGMENT:
JUDGMENT

P.P. NAOLEKAR, J.

The accused-appellant was convicted by the Sessions Court under Section 302 of IPC to undergo imprisonment for life and to pay a fine of Rs.1000/- and in default to undergo R.I. for a period of three months. He was further found guilty of charge under Section 449 IPC and sentenced to undergo imprisonment for ten years and to pay a fine of Rs.1000/-, in default to undergo R.I. for a period of three months. The sentence imposed on the appellant was confirmed by the High Court. Aggrieved by the said order of conviction, the present appeal is preferred by the accused-appellant.

The relevant facts from the evidence of the prosecution are that Pushpa (deceased), her brother Selvaraj (PW-3) and Radha (PW-2 wife of PW-3), were residing at Bagalur in a rented house. On 15th January, 1998 at about 5.00 P.M., when PW-2 was returning from Sandai (market), she heard hue and cry from her house and when she rushed towards the house, she saw the accused Ravikumar alias Kutti Ravi running away from her residence. She saw that deceased came out of their house in flames. She raised alarm and several neighbours came to the spot and put off the fire with the help of a blanket. The deceased narrated the incident to PW-2 that the accused along with his girl friend Mala alias Mallesi committed house trespass with the intention to outrage the modesty of the deceased and since she resisted, the accused-appellant at the instigation of Mala poured kerosene over her and set her on fire. The deceased thereafter was taken to the government hospital at Hosur. PW-9 Dr. Jayraman Raju, the resident doctor admitted her at 5.45 P.M. PW-9 gave intimation to the police and immediately thereafter the Head Constable Govindraaj (since deceased) came to the hospital and recorded the statement of the deceased (Exh.P-9) The doctor gave a certificate that the deceased was conscious at that time and that he had translated her version given in Telugu to Tamil so as to enable the constable to record the statement. The statement was received at the police station and a case was registered under Section 376 read with Sections 511 and 307, IPC. PW-9, doctor intimated to the Judicial Magistrate PW-8 (Thiru. Muthuraj) of the incident who in turn came to the hospital and recorded the dying declaration (Exh. P-4) of the deceased at 6.35 P.M. on the date of occurrence. PW-9 (doctor) translated the dying declaration given by the deceased in Telugu to

Tamil and also certified that at the time of giving the dying declaration she was conscious and in a fit state of mind to give the dying declaration. Later on Pushpa succumbed to her injuries and died on 21.1.98 at 4.30 P.M. in the government hospital, Hosur. PW-10 (R. Naresh) conducted the autopsy on the body and issued the postmortem certificate. The following injuries were found on the deceased :-

External Injuries:

"Grade 4 dermo epidermal burns extending as shown in figure, in front of chest and abdomen burns upto muscle deep-deep burns. Pus formation on both axilla and in thigh region present."

The doctor opined that Pushpa died due to septicaemia. He had opined that on account of 90% burn injuries suffered by the injured, septicaemia would have been caused amid in the ordinary course of events, which could have caused her death.

The case of the prosecution is primarily based upon the dying declaration of the deceased which found corroboration by the statement of PW-2. Section 32 of the Indian Evidence Act, 1872 is an exception to the general rule against hearsay. Clause (1) of Section 32 makes the statement of the deceased admissible which is generally described as 'dying declaration'. The dying declaration essentially means statements made by the person as to the cause of his death or as to the circumstances of the transaction resulting in his death. The admissibility of the dying declaration is based upon the principle that the sense of impending death produces in man's mind the same feeling as that the conscientious and virtuous man under oath. The dying declaration is admissible upon consideration that the declarant has made it in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to the falsehood is silenced and mind induced by the most powerful consideration to speak the truth. Notwithstanding the same, care and caution must be exercised in considering the weight to be given to these species of evidence on account of the existence of many circumstances which may affect their truth. The court has always to be in guard to see that the statement of the deceased was not the result of either tutoring or prompting or a product of imagination. The court has also to see and ensure that deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy itself that the deceased was in fit mental condition to make the dying declaration, has to look for the medical opinion. Once the court is satisfied that the declaration was true and voluntary, it undoubtedly, can base its conviction on dying declaration 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 the rule of prudence. These well settled principles have been recognized and reiterated by this Court in the cases Smt. Paniben v. State of Gujarat (1992) 2 SCC 474; Uka Ram v. State of Rajasthan (2001) 5 SCC 254; Laxman v. State of Maharashtra (2002) 6 SCC 710; P.V. Radhakrishna v. State of Karnataka (2003) 6 SCC 443; State of Maharashtra v.

Sanjay D. Rajhans AIR 2005 SC 97; and Muthu Kutty and Another v. State by Inspector of Police, Tamilnadu (2005) 9 SCC 113.

In Kanchy Komuramma v. State of A.P. (1995) Supp. 4 SCC 118 at para 11, it is laid down that there are certain safeguards which must be observed by the Magistrate when he is requested to record the dying declaration. The Magistrate before recording the dying declaration must satisfy himself that deceased is in a proper mental state to make the statement. He must record that satisfaction before recording the dying declaration. He must also obtain the opinion of the doctor, if one is available, about the fitness of the patient to make the statement and the prosecution must prove that opinion at the trial in the manner known to law. In Laxman v. State of Maharashtra (supra), a Constitution Bench of this Court while affirming an earlier ruling of a 3-Judge Bench of this Court in Koli Chunilal Savji and Anr. v. State of Gujarat (1999) 9 SCC 562 held that if the person recording the dying declaration is satisfied that the declarant was in fit mental condition to make the dying declaration then such dying declaration would not be invalid solely on the ground that the doctor has not certified as to the condition of the declarant to make the dying declaration.

In the light of the guidelines set out by this Court, we have to consider the acceptability of the dying declaration of the deceased in the present case.

It is urged by the learned counsel for the appellant that dying declaration was not free from suspicion as the deceased mentioned the presence of three accused whereas only two accused have alleged to have committed the offence. It is further urged that the Magistrate did not know Telugu and the dying declaration recorded by him on the basis of the translation made by PW-9 (doctor) cannot be relied upon for convicting the accused, particularly so when the doctor, at the time of admission of the deceased in the hospital, recorded in the accident register that the deceased was admitted as she had immolated herself which was later on struck off.

Pushpa, the deceased, was admitted in the hospital. Treating Doctor Dr. Jayraman Raju was examined as PW-9. He has categorically stated that when the deceased was admitted in the hospital she was in conscious state of mind. He had informed the police as well as the Judge about the incident. On information being sent to the police, the declaration of Pushpa was recorded by the Head Constable at the hospital. At that time she was in conscious state of mind. He was present when the statement of Pushpa was recorded. The statement recorded by the Head Constable is marked as Ex. P-9. In the statement, the deceased has stated that Kutty alias Ravi had taken kerosene can, poured the kerosene on her and lit the fire with matchbox and that she was admitted in the hospital by her father and brother. The declaration contained the note by Head Constable that Pushpa had narrated the incident in Telugu which was taken by the Head Constable in Tamil and that he knew Telugu. The Head Constable could not be examined since he had died. The doctor has certified that the patient was conscious while giving the declaration. In pursuance of the information sent to the Magistrate, the Magistrate came to the hospital and recorded the dying declaration of the deceased. The Magistrate Thiru Muthuraj was examined as PW-8. In his statement, he

has stated that he had received a letter from the doctor of Government Hospital, Hosur for recording the dying declaration of Pushpa. In pursuance thereof, he went to hospital at 6.30 P.M. He had satisfied himself before recording the dying declaration that the deceased was in a position to give the statement. He asked her name, her father's name, etc. and specifically put a question to her whether she would be able to give the declaration and she said "yes". After satisfying that she would be able to give the declaration, he recorded the statement. Pushpa gave dying declaration in Telugu. The duty doctor informed that he knows Telugu and, therefore, whatever was said by Pushpa in Telugu was translated into Tamil by the duty doctor PW-9. After recording the declaration in Tamil, the same was translated by the duty doctor in Telugu to Pushpa and Pushpa had accepted the same and to that effect a certificate had been given by him. He had obtained the thumb impression of Pushpa, the deceased, on the dying declaration.

From the evidence of these witnesses, it is apparent that Pushpa did not know Tamil and, therefore, the doctor who knew Telugu and Tamil translated the questions put by the Magistrate in Tamil into Telugu and the answers given in Telugu were translated into Tamil. The statement so recorded was read over and explained by the doctor to Pushpa and she admitted the same to be true and correct. The endorsement to that effect was made by the Magistrate. As the statement recorded by the Magistrate as translated by the doctor, was narrated to the deceased which she admitted, there cannot be any manner of doubt that whatever was stated by the deceased, was correctly recorded by the Magistrate in the dying declaration. We do not find any cross-examination of the two witnesses by the defence as regards the translation of the statement given in Telugu into Tamil by the doctor and recording the same in Tamil by the Magistrate.

The dying declaration as recorded was corroborated by the statement of PW-2 who has deposed that she returned to her house at about 5 p.m. from the market. She heard shouting at her house and she saw the accused running away from the place. She saw that the deceased was burning and on hearing her shouts neighbours rushed to the place and somebody gave a blanket and the fire was extinguished. After that she along with her uncle enquired from the deceased about what had happened and the deceased told them that Kutti Ravi was making advances time and again and she had not yielded. Kutti Ravi pushed the deceased and poured kerosene and lit fire and thereafter he ran away. The suggestion made by the defence that due to non-settlement of the marriage of Pushpa with the accused, Pushpa has poured kerosene on herself and lit fire, was denied.

It is contended by the counsel for the appellant that the dying declaration recorded by the Magistrate contained the names of Ravi, Kumar and Mallesi, but the charge is only against the accused appellant and, therefore, the dying declaration cannot be relied upon. It may be seen that while recording the statement in between the name of the accused Ravi-kumar, comma has been put and therefore it gives an impression that Ravi and Kumar are two persons whereas the name of the accused is Ravikumar. No question has been put to the Magistrate as regards the recording of the name of the accused as Ravi and putting comma thereafter and then

putting the name of Kumar. It is apparent from the dying declaration that it is a mistake committed by the Magistrate in splitting the name of Ravikumar into two names on the basis of which this argument has been advanced that there were three persons who were involved in commission of the crime. Two courts below have considered this submission and rejected the same, and rightly so.

It is also urged by the counsel for the appellant that when Pushpa was admitted in the hospital the doctor has written in the Accident Register that she has lit fire on herself which indicates that it was a case of suicide and not the homicide. In the statement of the doctor (PW-9), he has explained the position that alongwith Pushpa her father came to the hospital and when he enquired how the accident happened he said that he did not know. In this state of affairs, it can very well be presumed that the doctor assumed that the burn injuries were caused due to some act on her part and he, therefore, wrote in the register that she had lit fire on herself. When he came to know about the correct state of affairs, he erased that entry. In the factual scenario, it appears to us that the doctor made enquiries from the father and as the cause of injuries was not informed to him he by himself put the entry in the Accident Register that the deceased lit fire on herself and when the correct picture got emerged he erased the entry. The entry made in the Accident Register has been explained by the doctor in his statement. On the basis of this entry, the defence version of suicide cannot be accepted on the face of the two dying declarations of the deceased Pushpa recorded by the Magistrate and the Head Constable on the basis of which the FIR was registered. The evidence of the Magistrate PW-8 and the doctor PW-9 is absolutely clear and unambiguous.

As regards the manner in which the Magistrate recorded the statement of the deceased with the help of the doctor PW-9, there is no reason or material to show that the dying declaration was the result of either a product of imagination, tutoring or prompting. On the contrary, the same appears to have been made by the deceased voluntarily, it is trustworthy and has credibility.

For the aforesaid reasons, we do not find any good or sufficient reason to take a different view of the matter than what has been held by the Sessions Judge and the High Court. The appeal is, accordingly, dismissed.