

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.2309 OF 2011

State of Maharashtra

Appellant(s)

Versus

Pandurang @ Ajab Deoman Gawai
& Others

Respondent(s)

O R D E R

The present appeal is preferred against the judgement of acquittal passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur, in Criminal Appeal No.373 of 2006, whereby the Division Bench by judgement dated 29th September, 2010, has reversed the judgement of acquittal dated 3rd May, 2006, recorded by the learned Additional Sessions Judge, Amravati in Sessions Trial No.109 of 2005.

The deceased, Rama, entered into wedlock with one Sandeep Gavai, in the year 2002. In the wedlock, a son was born. After sometime the husband left the job at Ahmedabad and returned to his native place at Shelugund. Sandeep and Rama resided with their son in one part of the house, whereas the accused Nos.1 to 3, namely, parents in-law and brother in-law resided in separate part of the house, having

separate mess. As the prosecution story would further unveil, on 25th February, 2005, when the husband was temporarily absent from home, Rama suffered burn injuries and she was taken to the Irvin Hospital at Amravati by the husband. While she was in the hospital, as her condition was serious, a requisition was sent to the Executive Magistrate for recording her dying declaration and the Naib Tehsildar-cum-Executive Magistrate, PW-6, recorded the statement of the deceased, Rama, vide exhibit-32 at 11.30 a.m. on the same day i.e. 25th February, 2005. The deceased, Rama, succumbed to the injuries next day. At the instance of the police, an F.I.R. was registered and investigation was carried out. After examining certain witnesses, a charge-sheet was filed before the competent court, which in turn, committed the matter to the learned Additional Sessions Judge. As has been stated earlier, the matter was eventually tried by the learned Additional Sessions Judge, who had recorded the conviction. The learned trial Judge, as is noticeable, based the conviction solely relying on the dying declaration.

On an appeal being preferred by the accused persons, namely, the parents in-law, sister in-law (*Nanad*), brother in-law (*Devar*), the High Court scrutinized the reliability of exhibit-32, the dying declaration, as the conviction exclusively rested on the credibility and reliability of the dying declaration. The High Court on a

keen scrutiny found that there were certain infirmities and, that apart, the ocular evidence brought on record really did not support the prosecution case. Being of this view, the High Court recorded a judgement of acquittal. Hence, the present appeal has been preferred by the State assailing the judgement of reversal.

We have heard Mr. Shankar Chillarge, learned counsel for the State and Mr. Siddhesh Kotwal, learned counsel for the respondent.

The singular question that emerges for consideration is whether the High Court is justified in disbelieving the dying declaration, exhibit-32, on the ground of infirmities found by it. There is no cavil over the proposition of law that conviction can be based on the basis of a dying declaration alone, if the same is absolutely impeccable.

Learned counsel for the appellant would contend that when the deceased had sustained 90% burn injuries, the dying declaration did not commend credence. The said submission cannot always be accepted as an absolute proposition of law. There can be different situations. A person who has suffered 100% injuries, his or her dying declaration can be recorded. In *State of M.P. v. Dal Singh & Others* (2013) 14 SCC 159, after referring to various decisions of this Court, this Court has held as follows:

"29. Burn injuries are normally classified into

three degrees. The first is characterised by the reddening and blistering of the skin alone; the second is characterised by the charring and destruction of the full thickness of the skin; and the third is characterized by the charring of tissues beneath skin, e.g. of the fat, muscles and bone. If a burn is of a distinctive shape, a corresponding hot object may be identified as having been applied to the skin, and thus the abrasions will have distinctive patterns.

30. There may also be in a given case, a situation where a part of the body may bear upon it severe burns, but a small part of the body may have none. When burns occur on the scalp, they may cause greater difficulties. They can usually be distinguished from wounds inflicted before the body was burnt by their appearance, their position in areas highly susceptible to burning, and on fleshy areas by the findings recorded after internal examination. Shock suffered due to extensive burns is the usual cause of death, and delayed death may be a result of inflammation of the respiratory tract, caused by the inhalation of smoke. Severe damage to the extent of blistering of the tongue and the upper respiratory tract, can follow due to the inhalation of smoke. (See: Modi's Medical Jurisprudence and Toxicology by Lexis Nexis Butterworths Chapter 20)."

In the said case, a reference was made to the judgement in *Mafabhai Nagarbhai Raval vs. State of Gujarat*,

(1992) 4 SCC 69, wherein a question had arisen with regard to the issue whether a person suffering from 99% burn injuries, could be held to be capable enough for the purpose of making a dying declaration. This Court analysing many a facet came to hold that the dying declaration was worthy of reliance, as the same had been made truthfully and voluntarily. Similar view has also been expressed in *Jose s/o Edassery Thomas vs. State of Kerala* (2013) 14 SCC 172.

In view of the aforesaid, the said submission raised by the learned counsel for the respondent is not acceptable. Though, we have not accepted the said facet of the submission, yet we are obliged to consider other aspects that have been taken into consideration by the High Court. To appreciate the analysis made by the High Court, we have ourselves scrutinized the dying declaration made by the deceased, Rama. It is noticeable that the Executive Magistrate, PW-6, who had recorded the dying declaration, has really not endorsed that it was read over and explained to the deceased. He has also admitted the said position in the cross-examination. A submission has been canvassed by Mr. Chillarge, learned counsel for the State that there is a printed form. True it is, as far as recording of dying declaration is concerned, there cannot be a definite format or procedure. The person who records a dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making such a statement. The requirement

of a certificate provided by the doctor in respect of state of mind of the deceased is not essential in every case. However, the subject of evidentiary value and acceptability of a dying declaration, must be approached with caution for the reason that the maker of such a statement cannot be subjected to cross-examination. This has been stated by the Constitution Bench in *Laxman vs. State of Maharashtra* (2002) 6 SCC 710, and has also been reiterated in the case of *Dal Singh & Others* (supra).

We find that there is a doubt about the Executive Magistrate reading over and explaining the dying declaration to the deceased. In this context, we may refer with profit to the decision in *Shaikh Bakshu and Others vs. State of Maharashtra* (2007) 11 SCC 269, wherein it has been held as follows:

"There was no mention in the dying declaration that it was read over and explained to the deceased. The trial court and the High Court concluded that even though it is not so stated, it has to be presumed that it was read over and explained. The view is clearly unacceptable."

Regard had being to the oral evidence of the Executive Magistrate, the exhibit-32 and the aforesaid enunciation of law, we are of the considered opinion that the dying declaration in the facts and circumstances of the case it is unsafe to rest the conviction on the dying

declaration. Though, the High Court has ascribed certain other reasons, we need not get into the same, suffice to say that the judgement can be sustained only on the grounds we have stated and, accordingly, we so do.

In the result, we do not perceive any merit in this appeal and the same is, accordingly, dismissed.

.....J.
(Dipak Misra)

.....J.
(Uday Umesh Lalit)

New Delhi;
October 16, 2014.

ITEM NO.101

COURT NO.7

SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SCriminal Appeal No.2309/2011

STATE OF MAHARASHTRA

Appellant(s)

VERSUS

PANDURANG @ AJAB DEOMAN GAWAI & ORS.

Respondent(s)

(With appln. (s) for cancellation of bail)

Date : 16/10/2014 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE UDAY UMESH LALITFor Appellant(s) Mr. Shankar Chillarge, Adv.
Mr. Aniruddha P. Mayee, AORFor Respondent(s) Mr. Siddhesh Kotwal, Adv.
Mr. Nirnimesh Dube, AORUPON hearing the counsel the Court made the following
O R D E RThe appeal is dismissed in terms of the signed
order.(Chetan Kumar)
Court Master(Renuka Sadana)
Court Master

(Signed order is placed on the file)