A JAI KARAN

v.

STATE OF (N.C.T. OF DELHI)

SEPTEMBER 27, 1999

B [K.T. THOMAS AND D.P. MOHAPATRA, JJ.]

Indian Penal Code, 1860 : Section 302.

Murder—Accused—Causing death of wife by burning her—Conviction
C *based on dying declaration of wife—Validity of.*

Indian Evidence Act, 1872 : Section 32.

Dying declaration—Evidentiary value of—Accused—Allegation of wife burning—Dying declaration by deceased wife before Doctor—Evidence dis-
D *closing that Doctor before whom declaration was made was not on duty in the ward in which deceased was admitted—Statement made by deceased in Hindi recorded in English and also not read over to her—Signature of deceased not obtained—No endorsement that deceased was in a fit condition to make statement—Held, dying declaration made in such circumstances was*
E *not reliable—Conviction based on such a declaration held not valid.*

The appellant was prosecuted under Section 302 of the Indian Penal Code, 1860. The prosecution case was that he burnt his wife by pouring kerosene oil on her after a fight between the two. The evidence rested solely on the dying declaration made by the deceased before a Doctor in
F **the hospital. However, it was evident from the record that the Doctor before whom the dying declaration was claimed to have been made was not allotted duty in the unit in which deceased was admitted. In his evidence the said doctor stated that the injured person made the statement in Hindi while he recorded it in English; that he had not read over and explained the contents of the documents to the injured and had also**
G **not taken signature or thumb impression of the deceased on the document. Relying upon the said dying declaration the Trial Court convicted the appellant and sentenced him to rigorous imprisonment for life. On appeal the High Court held that the dying declaration was a reliable piece of evidence on which the order of conviction could be based and accord-**
H **ingly confirmed the conviction and sentence passed by the Trial Court.**

In appeal to this Court on the question whether the dying declaration made by the deceased was reliable and conviction can be based on the same: A

Allowing the appeal and setting aside the impugned judgment, this Court B

HELD : 1. The Courts below erred in passing the judgment and order of conviction against the appellant on the basis of dying declaration. In the facts and circumstances of the case emerging from the evidence on record it is difficult to rely on the alleged dying declaration as the sole basis for conviction. [210-A] C

2. From the statement of Doctor, who was the head of the unit of the hospital in which deceased was admitted, it is clear that the Doctor before whom the dying declaration was said to have been made, was not allotted duty in the unit in which the deceased was admitted. This statement by the head of the unit is very important. It raises a serious doubt D whether the Doctor before whom the dying delcaration was said to have been made was at all on duty in the burns ward at the time when the injured was admitted. Further, from the endorsement made by another Doctor who was the medical officer in charge of the ward it is clear that the deceased was not in a fit condition for making a statement. There was E no statement as to when her condition improved and she became fit for making the statement. Consequently, it will not be safe to convict the appellant solely on the basis of the dying declaration made by the deceased. [209-E-F-G; 210-A]

3. A dying declaration is admissible in evidence on the principle of F necessity and can form the basis for conviction if it is found to be reliable. While it is in the nature of an exception to the general rule forbidding hearsay evidence, it is admitted on the premise that ordinarily a dying person will not falsely implicate an innocent person in the commission of a serious crime. It is this premise which is considered strong enough to G set off the need that the maker of the statement should state so on oath and be cross examined by the person who is sought to be implicated. In order that a dying declaration may form the sole basis for conviction without the need for independent corroboration it must be shown that the person making it had the opportunity of identifying the person implicated and is thoroughly reliable and free from blemish. If, in the facts and H

circumstances of the case, it is found that the maker of the statement was in a fit state of mind and had voluntarily made the statement on the basis of personal knowledge without being influenced by others and the court on strict scrutiny finds it to be reliable, there is no rule of law or even of prudence that such a reliable piece of evidence cannot be acted upon unless it is corroborated. A dying declaratrion is an independent piece of evidence like any other piece of evidence – neither extra strong nor weak - and can be acted upon without corroboration if it is found to be otherwise true and reliable. [204-D-E-F-G-H]

Padmaben Shamalbhai Patel v. *State of Gujarat*, **[1991] 1 SCC 744;** *Jayaraj* v. *State of Tamil Nadu* **AIR (1976) SC 1519;** *Khushal Rao* v. *State of Bombay*, **AIR (1958) SC 22 and** *Paniben* v. *State of Gujarat*, **[1992] 2 SCC 474, relied on.**

Munnu Raja v. *State of M.P.*, **[1976] 3 SCC 104;** *State of U.P.* v. *Ram Sagar Yadav*, **[1985] 1 SCC 552;** *Ramawati Devi* v. *State of Bihar*, **[1983] 1 SCC 211;** *K. Ramachandra Reddy* v. *Public Prosecutor*, **[1976] 3 SCC 618;** *Rasheed Beg* v. *State of M.P.*, **[1974] 4 SCC 264;** *Kake Singh* v. *State of M.P.*, **[1981] Supp. SCC 25;** *Ram Manorath* v. *State of U.P.*, **[1981] 2 SCC 654;** *State of Maharashtra* v. *Krishnamurti Laxmipati Naidu*, **[1980] Supp. SCC 455;** *Surajdeo Oza* v. *State of Bihar*, **[1980] Supp. SCC 769;** *Nanahau Ram* v. *State of M.P.*, **[1988] Supp. SCC 152 and** *State of U.P.* v. *Madan Mohan*, **[1989] 3 SCC 390, referred to.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 930 of 1998.

From the Judgment and Order dated 19.11.97 of the Delhi High Court in Crl. A. No. 91 of 1994.

Ms. Manjeet Chawla for the Appellant.

P.P.Malhotra, (Y.P. Mahajan) for Mrs. Anil Katiyar for the Respondent.

The Judgment of the Court was delivered by

D.P. MOHAPATRA, J. : In this appeal filed by the accused Jai Karan the judgment of the learned Additional Sessions Judge, Delhi in Sessions case No. 16/91 holding him guilty of the charge under Section 302 IPC for

the murder of his wife Wanti Devi (hereinafter referred. to as 'deceased') and the order sentencing him to R.I. for life which was confirmed by the High Court of Delhi in Criminal Appeal No.91/94, is under challenge.

The genesis of the case is that the relationship between the appellant and the deceased was not cordial. The deceased had gone to the Court with a claim for maintenance against the appellant. On the intervention of their relations and well-wishers the differences were patched-up and he withdrew the case. Thereafter the deceased returned to her marital home and started living with the appellant. This happened about 7-8 months before the fateful incident.

On the intervening night of 25/26.9.90 the deceased was admitted to the Jai Prakash Narain Hospital, Delhi (LNJPN) with extensive burn injuries on her body. On being informed about it by the duty constable, S.I. Baltej Singh (PW 19) arrived at the hospital and obtained the medico-legal certificate of the deceased in which it was stated *inter-alia* that the story given by the patient was to the effect that she was burnt by her husband by pouring kerosene oil after a fight between the two. On such information a formal FIR under Section 307 IPC was registered. Later in the day at about 9.45 a.m. on receiving the information that Wanti Devi expired at 8.35 a.m. the case was converted into one under Section 302 IPC. After investigation charge-sheet under Section 302 IPC was filed against the appellant.

Having denied the charge the appellant faced trial. It was his case that the injuries sustained by the deceased were accidental and the incident occurred when she was trying to light the kerosene stove.

The prosecution examined in all 19 witnesses including three Doctors, Dr. Anil Kumar Aggarwal (PW 2), who conducted the post mortem examination of the deceased; Dr. P.S. Bhandari (PW 3), who was the head of the unit of the LNJPN Hospital, Delhi in which injured Wanti Devi was admitted; Dr. Gaurav Nijhara (PW 11), who is said to have recorded the dying declaration of the deceased (Ex.PW 11/A); Munshi Ram (PW 4) and Joginder Singh (PW 5) neighbours of the parties; Hari Singh (PW 10) father of the deceased; Chhano Devi (PW 17) mother of the deceased; Prem Singh (PW 16) a nephew of the deceased and Baltej Singh (PW 19), Sub-Inspector of Police, the Investigating Officer. Neither the neighbours nor the relations of the deceased supported the prosecution case and they

A were cross-examined by the public prosecutor with permission of the Court.

Beena (DW 1) daughter of the deceased was the sole witness for the defence.

B The learned trial judge, as appears from the discussion in the judgment, believed the prosecution case that it was the accused who poured kerosene on his wife and lit the match-stick on account of which she suffered the fatal injuries, relying mainly on the dying declaration (Exh. 11/A) and accordingly passed the order of conviction and sentence.

C The High Court on perusal of the oral and documentary evidence came to the conclusion that the dying declaration was a reliable piece of evidence on which the order of conviction could be based and accordingly confirmed the judgment and order of the trial court.

D The short Question that arises is whether the dying declaration said to have been made by the deceased (Exh. 11/A) is believable and acceptable and conviction can be based on the same.

A dying declaration is admissible in evidence on the principle of E necessity and can form the basis for conviction if it is found to be reliable. While it is in the nature of an exception to the general rule forbidding hearsay evidence, it is admitted on the premise that ordinarily a dying person will not falsely implicate an innocent person in the commission of a serious crime. It is this premise which is considered strong enough to set off the need that the maker of the statement should state so on oath and F be cross examined by the person who is sought to be implicated. In order that a dying declaration may form the sole basis for conviction without the need for independent corroboration it must be shown that the person making it had the opportunity of identifying the person implicated and is thoroughly reliable and free from blemish. If, in the facts and circumstances of the case, it is found that the maker of the statement was in a fit state of G mind and had voluntarily made the statement on the basis of personal knowledge without being influenced by others and the Court on strict scrutiny finds it to be reliable, there is no rule of law or even of prudence that such a reliable piece of evidence cannot be acted upon unless it is corroborated. A dying declaration is an independent piece of evidence like H any other piece of evidence – neither extra strong nor weak-and can be

acted upon without corroboration if it is found to be otherwise true and reliable. (1991) 1 SCC 744 *Padmaben Shamalbhai Patel* v. *State of Gujarat*, Para 8.

In AIR (1976) SC 1519 (*Jayaraj* v. *State of Tamil Nadu*) this Court made the following observations :

> "When the deponent (while making his dying declaration) was in severe bodily pain (because of stabbing injuries in abdomen), and words were scarce, his natural impulse would be to tell the Magistrate, without wasting his breath on details, as to who had stabbed him. The very brevity of dying declaration, in the circumstances of the case, far from being a suspicious circumstance, was an index of its being true and free from the taint of tutoring, more so when the substratum of the dying declaration was fully consistent with the ocular account given by the eye-witnesses."

In case of *Khushal Rao* v. *State of Bombay*, AIR (1958) SC 22 this Court laid down the following propositions of law relating to the test of reliability of dying declaration :

(1) That it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;

(2) That each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made;

(3) That it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other piece of evidence;

(4) That a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence;

(5) That a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable,

A in the words of the maker of the declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character; and

(6) That in order to test the reliability of a dying declaration, the Court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.

D In the case of *Paniben* v. *State of Gujarat*, [1992] 2 SCC 474 this Court summed up the principles of dying declaration with the following observation (para 18):

"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 deceased was not as a result of either tutoring, 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 assailants. 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. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under :

"(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration (*Munnu Raja* v. *State of M.P.*, [1976] 3 SCC 104;

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (*State of U.P.* v. *Ram Sagar Yadav*, [1985] 1 SCC 552 and *Ramawati Devi* v. *State of Bihar*, [1983] 1 SCC 211).

(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration (*K. Ramachandra Reddy* v. *Public Prosecutors*, [1976] 3 SCC 618);

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence *Rasheed Beg* v. *State of M.P.*, [1974] 4 SCC 264;

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. *(Kake Singh* v. *State of M.P.*, [1981] Supp SCC 25);

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction (*Ram Manorath* v. *State of U.P.*, [1981] 2 SCC 654);

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (*State of Maharashtra* v. *Krishnamurti Laxmipati Naidu*, [1980] Supp. SCC 455);

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth, *Surajdeo Oza* v. *State of Bihar*, [1980] Supp. SCC 769;

(ix) Normally the Court in order to satisfy whether deceased was

A in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (*Nanahau Ram* v. *State of M.P.*, [1988] Supp. SCC 152);

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(x) Where the prosecution version differs from the version as given in the dying declaration, the-said declaration cannot be acted upon. (*State of U.P.* v. *Madan Mohan*, [1989] 3 SCC 390)."

Testing the case in hand on the touchstone of the principles laid C down in the decisions noted above the position that emerges is that the prosecution evidence rests solely on the dying declaration said to have been made by the deceased since the parents, other relations and neighbours did not support its case. From the evidence of Dr. Bhandari (PW 3), it appears that he had produced the case sheets pertaining to injured Wanti D Devi in the Court and with reference to those papers he stated that the injured was admitted in the burns ward of the hospital on 26.9.90 at 1.00 a.m. with 95% burns; that she was seen by Dr. Rajender Prasad Singh, the then medical officer on duty in the ward and that the case sheets were written by Dr. Rajender Prasad Singh. From the evidence of this witness E it is clear that though he was the head of the unit in which the patient was admitted he had not personally attended the patient nor had any knowledge about the statement made by her. The witness could not say where Dr. Gaurav Nijhara was on duty on that day, even after seeing records.

F Dr. Gaurav Nijhara (PW11) in his testimony has stated that he was posted as medical officer in L.N.J.P. hospital on 26.9.90 and on that day injured Wanti Devi wife of Jai Karan was brought to the hospital by her husband. It is also in his evidence that the injured told the witness that after a fight with her husband he (husband) poured kerosene on her and G lit the fire; that on examining the injured he found her having 90% burns; that she was conscious, cooperative and oriented regarding time, place and person. The witness claims that he admitted her in the burns ward and prepared her MLC No. 89766 and he signed the document Ex.PW 11/A. The witness also examined the accused when he brought his wife and gave H the history of burning both his hands while "burning his wife with

kerosene". This history was also written by the witness (Ex.PW 11/B). The witness has also stated that the injured persons (deceased and accused) made the statement in Hindi while he recorded it in English, that he had not read over and explained the contents of the document to the injured. He had also not taken her signature or thumb impression on the document. No other person had attested the statement alleged to have been made by the injured Wanti Devi before the witness.

A look at the document Ex. PW 11/A clearly brings out that an endorsement had been made by Dr. Rajender Prasad Singh at 1.10 a.m. that the injured Wanti Devi was not in a fit condition for making statement. This endorsement also gains support from the evidence of the Police Officer (PW 19) who stated that on getting the information about the incident when he reached the hospital he was told that the injured is .not in a fit condition for making any statement and he returned without recording any statement.

A closer look at the document also shows that a portion of it stating "after fight between the two" was written in a different manner (words written in smaller letters) giving an impression that it was not written at the time of making the rest of the endorsements.

From the statement of Dr. Bhandari it is clear that Dr. Gaurav Nijhara was not allotted duty in the unit in which the deceased Wanti Devi was admitted. It is his categorical statement that he could not say where Dr. Nijhara was allotted duty in the hospital. This statement by the head of the unit is very important. The statement raises a serious doubt whether Dr. Gaurav Nijhara was at all on duty in the burns ward at the time when the injured was admitted. Further, from the endorsement made by Dr. Rajender Prasad Singh who was the medical officer in charge of the ward the injured was not in a fit condition for making a statement. There is no statement made by Dr. Nijhara or any other witness when her condition improved and she became fit for making the statement. Unfortunately, Dr. Rajender Prasad Singh has not been examined by the prosecution.

In the facts and circumstances of the case emerging from the evidence on record as discussed in the foregoing paragraphs, we find it difficult to rely on the alleged dying declaration as sole basis for conviction.

A On perusal of the records and on giving our anxious considerations to the entire matter we are of the view that it will not be safe to convict the appellant solely on the basis of the dying declaration made by the deceased. The learned Courts below erred in passing the judgment and order of conviction against the appellant on that basis.

B The appeal is allowed. The impugned Judgment of the High Court of Delhi in Criminal Appeal No. 91 of 1994 confirming the judgment of the Additional Sessions Judge, Delhi in Sessions Case No .16 of 1991 is set aside and the appellant is acquitted of the charges framed against him.

T.N.A. Appeal allowed.