A SMT. SHAKUNTALA

*v.*

STATE OF HARYANA

JULY 27, 2007

B [DR. ARIJIT PASAYAT AND P.P. NAOLEKAR, JJ.]

*Penal Code, 1860—s. 302—Murder—Daughter-in-law set on fire—By mother-in-law—Dying declaration—Recorded by First Class Judicial*
C *Magistrate—After certification of the doctor that she was fit to make statement—Conviction by courts below relying on dying declaration—On appeal, held: Conviction justified—Murder was intentionally committed—The evidence of the prosecution witnesses establish that dying declaration was made when the deceased was in a fit condition to give declaration—No material to show that dying declaration was result of imagination, tutoring*
D *or prompting.*

*Evidence Act, 1872—s. 32(1)—Dying declaration—Nature of—Admissibility—Principles and grounds for—Held: It is an exception to the general rule against hearsay just stated—It is a piece of untested evidence and must like any other evidence satisfying the court that what is stated*
E *therein is unalloyed truth and it is absolutely safe to act upon it—If it is coherent and consistent, the same can be formed basis of conviction without any corroboration.*

*Maxims—'nemo moriturus proesumitur mentiri'—Meaning of.*

F *Words and Phrases—'Dying declaration'—Meaning of in the context of s. 32(1) of Evidence Act, 1872.*

**The allegation against the appellant-accused was that she caused death of her daughter-in-law. According to prosecution, subsequent to a quarrel**
G **between the accused and the deceased over inadequate dowry brought at the time of marriage, the deceased poured kerosene oil on herself to scare her mother-in-law appellant. But appellant took a match box and set the deceased on fire. While the deceased was admitted in the hospital, PW 6 (Judicial Magistrate, First Class) recorded her dying declaration after it was certified by PW 5 (doctor) that she was fit to make statement. FIR was registered u/s**

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307 IPC on the basis of dying declaration. After her death the offence was converted to one u/s 302 IPC. After investigation appellant was charged u/ss. 498-A and 304-B IPC and in the alternative u/s 302 IPC. A

Trial Court relying on the dying declaration and on the evidence of PWs 5 and 6 convicted the appellant for the offence u/s 302 and acquitted her of the rest of the charges. High Court confirmed the conviction. Hence the present appeal. B

Dismissing the appeal, the Court

HELD: 1.1. The background in which the appellant put the deceased on fire clearly indicates what was her intention as she fully knew that the deceased would be burnt to death. The deceased sprinkled kerosene all over her body to scare the appellant but the appellant on the contrary took the match stick and put the same on the body of the deceased. It is crystal clear that the murder was intentionally committed. Accordingly, the trial Court and the High Court have rightly held that Section 302 IPC was applicable. C

[Para 13] [617-C, D] D

1.2. In the present case, there is no material to show that dying declaration was result of 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. [Para 11] [616-G; 617-A]

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1.3. The evidence of PWs 5 and 6 clearly established that the dying declaration was made when the deceased was in a fit condition to give declaration. The accident occurred on 6.4.1997 at about 9.00 a.m. but the deceased breathed her last on 11.4.1997. The doctor (PW-5) has categorically stated that the deceased was in a fit condition to give the statement. The Judicial Magistrate (PW-6) also stated that the deceased was in a fit condition to give the statement and was able to understand what was being asked and she answered specifically. In the aforesaid background, it cannot be said that the dying declaration is not believable. [Para 12] [617-A-B] F

2.1. The general rule of evidence is that all oral evidence must be direct viz., if it refers to a fact which could be seen it must be the evidence of the witness who says he saw it, if it refers to a fact which could be heard, it must be the evidence of the witness who says he heard it, if it refers to a fact which could be perceived by any other sense, it must be the evidence of the witness who says he perceived it by that sense. Similar is the case with opinion. These aspects are elaborated in Section 60 of Evidence Act. [Para 7] [613-D, E] G H

A 2.2. The eight clauses of Section 32 of Evidence Act are exceptions to the general rule against hearsay just stated. Clause (1) of Section 32 makes relevant what is generally described as dying declaration, though such an expression has not been used in any Statute. It essentially means statements made by a person as to the cause of his death or as to the circumstances of the transaction resulting in his death. The grounds of admission are: firstly, B necessity for the victim being generally the only principal eye-witness to the crime, the exclusion of the statement might deflect the ends of justice; and secondly, the sense of impending death, which creates a sanction equal to the obligation of an oath. The general principle on which this species of evidence is admitted is that they are declarations made in extremity, when the party is C 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; a situation so solemn and so lawful 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.

[Para 7] [613-F, G; 614-A]

D

*R.* v. *Wood Cock,* (1789) 1 Leach 500, referred to.

2.3. The principle on which dying declaration is admitted in evidence is indicated in legal maxim "nemo moriturus proesumitur mentiri – a man will E not meet his maker with a lie in his mouth." [Para 7] [614-E]

2.4 This is a case where the basis of conviction of the accused is the dying declaration. The situation in which a person is on 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 the F 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 eye-witness in a serious crime, the exclusion of the statement would leave the Court without a scrap of evidence. [Para 8] [614-F-G]

G 2.5. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. The Court has to be on guard that the statement of 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 H 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. [Para 9] [614-G; 615-A-B]**

*Smt. Paniben* **v.** *State of Gujarat,* **AIR (1992) SC 1817;** *Munnu Raja and Anr.* **v.** *The State of Madhya Pradesh,* **[1976] 2 SCR 764;** *State of Uttar Pradesh* **v.** *Ram Sagar Yadav and Ors.,* **AIR (1985) SC 416;** *Ramavati Devi* **v.** *State of Bihar,* **AIR (1983) SC 164;** *K. Ramachandra Reddy and Anr.* **v.** *The Public Prosecutor,* **AIR (1976) SC 1994;** *Rasheed Beg* **v.** *State of Madhya Pradesh,* **[1974] 4 SCC 264;** *Kaka Singh* **v.** *State of M.P.,* **AIR (1982) SC 1021;** *Ram Manorath and Ors.* **v.** *State of U.P.,* **[1981] 2 SCC 654;** *State of Maharashtra* **v.** *Krishnamurthi Laxmipati Naidu,* **AIR (1981) SC 617;** *Surajdeo Oza and Ors.* **v.** *State of Bihar,* **AIR (1979) SC 1505;** *Nanahau Ram and Anr.* **v.** *State of Madhya Pradesh,* **AIR (1988) SC 912;** *State of U.P.* **v.** *Madan Mohan and Ors.,* **AIR (1989) SC 1519; and** *Mohanlal Gangaram Gehani* **v.** *State of Maharashtra,* **AIR (1982) SC 839, relied on.**

**2.6. The dying declaration is only a piece of untested evidence and must like any other evidence, satisfy the Court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. 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 basis of conviction, even if there is no corroboration. [Para 10] [616-E-F]**

*Gangotri Singh* **v.** *State of U.P.,* **JT (1992) 2 SC 417;** *Goverdhan Raoji Ghyare* **v.** *State of Maharashtra,* **JT (1993) 5 SC 87;** *Meesala Ramakrishan* **v.** *State of Andhra Pradesh,* **JT (1994) 3 SC 232;** *State of Rajasthan* **v.** *Kishore,* **JT [1996] 2 SC 595, relied on.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 376 of 2002.

From the Judgment & Order 24.02.2001 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 149-DB of 1998.

Jatika Kalra and Bhaskar Y. Kulkarni (SCLSC) for the Appellant.

Roopansh Purohit, Rajeev Gaur Naseem and T.V. George for the Respondent.

A The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to the order passed by a Division Bench of the Punjab and Haryana High Court upholding the conviction of the appellant for an offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') and sentence of imprisonment B for life as awarded by the learned Sessions Judge, Rohtak in Sessions Case No.31 of 1997.

2. The appellant was charged for offences punishable under Sections 498-A, 304-B and 302 IPC. The trial Court found the accused guilty of offence C punishable under Section 302 IPC while acquitting her from the other charges.

3. Background facts in a nutshell are as follows:

Suman (hereinafter referred to as the 'deceased') daughter of Balbir Singh had been married with one Bikram Singh son of accused-appellant, resident of village Kabulpur about two years prior to the incident. At about D 9.00 A.M. on 6th April, 1997, the deceased and the accused had a quarrel over the inadequate dowry brought at the time of the marriage. As the deceased was fed up with the daily squabbles, she picked up a can of Kerosene oil to scare her mother-in-law-the appellant with an intention to keep her quiet, but the appellant on the contrary, took out a match box and E set the deceased on fire and having done so ran out of the room calling out that deceased had set herself on fire. The villagers, who had collected there on hearing the noise, rushed her to the P.G.I.M.S., Rohtak, A ruqa sent to the police post, brought ASI Om Parkash (PW-7) and after collecting the medico-legal report from the hospital, he moved an application before Dr. Ranbir Singh (PW-5) who certified her to be fit to make a statement. Shri A.K. F Singhal, JMIC, Rohtak (PW-6) was brought to the hospital, who recorded her statement and on its basis, the formal F.I.R. was registered at 4.45 P.M. on 6th April, 1997 initially for offences punishable under Section 307 IPC but on Suman's death on 11th April, 1997, the offence was converted to one under Section 302 IPC. On completion of the investigation, the accused was charged G for offences punishable under Sections 498-A and 304-B IPC and in the alternative for an offence punishable under Section 302 IPC and as she pleaded not guilty, was brought to trial.

4. The prosecution version was centered primarily around the dying declaration which was recorded by the learned First Class Judicial Magistrate H (PW-6). Dr. Ranbir Singh (PW-5) had declared the deceased in a fit condition

to make the dying declaration. The trial Court found the dying declaration to be acceptable and relying on the evidence of PWs 5 and 6, conviction of the appellant as noted above was recorded. The appellant's stand, that the dying declaration was not believable, was not accepted. As noted above, appeal before High Court was dismissed.

5. In support of the appeal, learned counsel for the appellant submitted that the evidence of PWs 5 and 6 so far as the dying declaration is concerned cannot be accepted. The deceased suffered from 100% burns and therefore the statement of PWs 5 and 6 that the deceased was in a fit condition is not acceptable. He also submitted that there was another dying declaration which was recorded by PW-4. Unfortunately, the same was discarded without any basis. Alternatively it was submitted that case under Section 302 IPC is not maintainable.

6. Learned counsel for the State on the other hand supported the judgment of the trial Court.

7. At this juncture, it is relevant to take note of Section 32 of the Indian Evidence Act, 1872 (in short 'Evidence Act') which deals with cases in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant. The general rule is that all oral evidence must be direct viz., if it refers to a fact which could be seen it must be the evidence of the witness who says he saw it, if it refers to a fact which could be heard, it must be the evidence of the witness who says he heard it, if it refers to a fact which could be perceived by any other sense, it must be the evidence of the witness who says he perceived it by that sense. Similar is the case with opinion. These aspects are elaborated in Section 60. The eight clauses of Section 32 are exceptions to the general rule against hearsay just stated. Clause (1) of Section 32 makes relevant what is generally described as dying declaration, though such an expression has not been used in any Statute. It essentially means statements made by a person as to the cause of his death or as to the circumstances of the transaction resulting in his death. The grounds of admission are: firstly, necessity for the victim being generally the only principal eye-witness to the crime, the exclusion of the statement might deflect the ends of justice; and secondly, the sense of impending death, which creates a sanction equal to the obligation of an oath. The general principle on which this species of evidence is admitted is that they are declarations 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

A is induced by the most powerful considerations to speak the truth; a situation so solemn and so lawful 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. These aspects have been eloquently stated by Lyre LCR in *R.* v. *Wood Cock*, (1789) 1 Leach 500. Shakespeare makes the wounded Melun, finding himself disbelieved while announcing the intended treachery of the Dauphin Lewis explain:

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"Have I met hideous death within my

view,

C Retaining but a quantity of life,

Which bleeds away even as a form of wax,

Resolveth from his figure 'gainst the fire?

What is the world should make me now deceive,

D

Since I must lose the use of all deceit?

Why should I then be false since it is true

That I must die here and live hence by truth?"

E (See King John, Act 5, Sect.4)

The principle on which dying declaration is admitted in evidence is indicated in legal maxim "nemo moriturus proesumitur mentiri - a man will not meet his maker with a lie in his mouth."

F 8. This is a case where the basis of conviction of the accused is the dying declaration. The situation in which a person is on 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 the requirements of oath and cross-examination are dispensed with. Besides, should the dying declaration be excluded it will result in miscarriage G of justice because the victim being generally the only eye-witness in a serious crime, the exclusion of the statement would leave the Court without a scrap of evidence.

9. Though a dying declaration is entitled to great weight, it is worthwhile H 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, 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. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in *Smt. Paniben* v. *State of Gujarat,* AIR (1992) SC 1817:

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. [See *Munnu Raja & Anr.* v. *The State of Madhya Pradesh,* [1976] 2 SCR 764]

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. [See *State of Uttar Pradesh* v. *Ram Sagar Yadav and Ors.,* AIR (1985) SC 416 and *Ramavati Devi* v. *State of Bihar,* AIR (1983) SC 164]

(iii) The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. [See *K. Ramachandra Reddy and Anr.* v. *The Public Prosecutor,* AIR (1976) SC (1994)]

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. [See *Rasheed Beg* v. *State of Madhya Pradesh,* [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. [See *Kaka Singh* v *State of M.P.,* AIR (1982) SC 1021]

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

A (vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected. [See *State of Maharashtra* v. *Krishnamurthi Laxmipati Naidu,* AIR (1981) SC 617]

(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 B truth. [See *Surajdeo Oza and Ors.* v. *State of Bihar,* AIR (1979) SC 1505].

(ix) Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye-witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot C prevail. [See *Nanahau Ram and Anr.* v. *State of Madhya Pradesh,* AIR (1988) SC 912].

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. [See *State* D *of U.P.* v. *Madan Mohan and Ors.,* AIR (1989) SC 1519].

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. [See *Mohanlal Gangaram Gehani* v. *State of Maharashtra,* E AIR (1982) SC 839]

10. In the light of the above principles, the acceptability of alleged dying declaration in the instant case has to be considered. The dying declaration is only a piece of untested evidence and must like any other evidence, satisfy the Court that what is stated therein is the unalloyed truth F and that it is absolutely safe to act upon it. 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 basis of conviction, even if there is no corroboration. [See *Gangotri Singh* v. *State of U.P.* JT (1992) 2 SC 417, G *Goverdhan Raoji Ghyare* v. *State of Maharashtra,* JT (1993) 5 SC 87, *Meesala Ramakrishan* v. *State of Andhra Pradesh,* JT (1994) 3 SC 232 and *State of Rajasthan* v. *Kishore,* JT (1996) 2 SC 595].

11. There is no material to show that dying declaration was result of product of imagination, tutoring or prompting. On the contrary, the same H appears to have been made by the deceased voluntarily. It is trustworthy and

has credibility. A

12. The evidence of PWs 5 and 6 clearly established that the dying declaration was made when the deceased was in a fit condition to give declaration. It is to be noted that the accident occurred on 6.4.1997 at about 9.00 a.m. but the deceased breathed her last on 11.4.1997. The doctor (PW-5) has categorically stated that the deceased was in a fit condition to give B the statement. The Judicial Magistrate (PW-6) also stated that the deceased was in a fit condition to give the statement and was able to understand what was being asked and he answered specifically. In the aforesaid background, it cannot be said that the dying declaration is not believable.

13. Coming to the plea of non applicability of Section 302 IPC the same C is equally without substance. The background in which the appellant put the deceased on fire clearly indicates what was her intention as she fully knew that the deceased would be burnt to death. The deceased sprinkled kerosene all over her body to scare the appellant but the appellant on the contrary took the match stick and put the same on the body of the deceased. It is crystal D clear that the murder was intentionally committed. Accordingly, the trial Court and the High Court have rightly held that Section 302 IPC was applicable.

14. The appeal is sans merit and is dismissed.

K.K.T. Appeal dismissed E