

BHADRAGIRI VENKATA RAVI

A

v.

PUBLIC PROSECUTOR HIGH COURT OF A.P.,
HYDERABAD

(Criminal Appeal No. 248 of 2007)

MAY 29, 2013

B

[DR. B.S. CHAUHAN AND DIPAK MISRA, JJ.]

Penal Code, 1860 - s.302 - Death of woman due to burn injuries - Acquittal of accused-appellant (divorced husband of deceased) by trial court - But conviction by High Court u/ s.302 - On appeal, held: There were three dying declarations - First two declarations did not implicate the appellant - The third declaration dated 28.4.2000 implicated the appellant but the same being full of contradictions does not inspire confidence - Settled legal proposition that in case there are apparent discrepancies in two dying declarations, it would be unsafe to convict the accused - In such a fact-situation, the accused gets the benefit of doubt - Trial Court found material inconsistencies in the case of the prosecution and did not see any reason to rely upon the dying declaration dated 28.4.2000 - High Court did not consider the matter in correct perspective nor observed the parameters laid down by Supreme Court to interfere against the order of acquittal - Order of trial court restored.

C

D

E

F

Evidence Act, 1872 - s.32 - Multiple dying declarations - Appreciation of.

Appeal - Appeal against acquittal - Scope of interference.

G

A woman died due to burn injuries. One day after the incident, on 15-4-2000, the statement / complaint of the deceased was recorded by the head constable of police wherein she stated that a stove full of kerosene oil fell

A upon her and thus, she suffered burn injuries. On the same day, her dying declaration was recorded by the Executive Magistrate after getting certificate of fitness from the Doctor, wherein a similar statement had been recorded.

B A fortnight later, on 28.4.2000, her another dying declaration was recorded by the Executive Magistrate wherein she alleged that while she was cooking food and all the students had gone home, the appellant (the divorced husband of the deceased) poured kerosene on
C her body and threw the burning stove on her, due to which she received severe burn injuries.

The trial Court acquitted the appellant, but on appeal by the State, the High Court reversed the acquittal and
D convicted the appellant under Section 302 IPC and sentenced him to undergo life imprisonment. Hence, the instant appeal.

Allowing the appeal, the Court

E HELD: 1. The first two dying declarations were made in the Government Headquarter Hospital, Vijianagaram and the Magistrate had reached there on being called by the police. There is no inconsistency between the first two dying declarations and it is evident from the said
F dying declarations recorded on 15.4.2000 that both of them had been recorded in the Government Headquarter Hospital, Vijianagaram. The third dying declaration makes it evident that on 15.4.2000 she had not been taken to the Government Hospital and her in-laws were not available
G on 14.4.2000. Her husband had been treating her at home and had also given her injections for two-three days. Her parents-in-laws reached on 15.4.2000 from Rajahmundry and then she was admitted to the private hospital on 16.4.2000. As she could not recover therein, then she was
H transferred to Government Headquarter Hospital,

Vijianagaram on that day. [Para 8] [539-D-F]

A

2. The Trial Court found material inconsistencies in the case of the prosecution and did not see any reason whatsoever to rely upon the dying declaration dated 28.4.2000 as the contents thereof were admittedly false and could not be relied upon. If the dying declaration has been recorded by the Executive Magistrate on 15.4.2000 in the Government hospital, the question of her being treated by her husband for 2-3 days and then her admission in a private hospital did not arise at all. Her version that she was admitted to the Government Headquarter hospital, Vijianagaram on 16.4.2000 could not be true. The contents of the dying declaration dated 28.4.2000 being full of contradiction do not inspire confidence. [Para 13] [541-A-C]

B

C

D

3. Admittedly, there was a divorce between the parties. Therefore, the question of demand of dowry or ill-treatment or harassment could not arise after 8 years of divorce decree by the court. The mother of the deceased has deposed about the illicit relationship of the appellant and another woman and the appellant wanted to marry that woman. In case the parties had separated by a divorce through court, one fails to understand how the deceased or her parents were concerned about such a relationship. [Para 14] [541-D-E]

E

F

4. It is a settled legal proposition that in case there are apparent discrepancies in two dying declarations, it would be unsafe to convict the accused. In such a fact-situation, the accused gets the benefit of doubt. In case of plural/multiple dying declarations, the court has to scrutinise the evidence cautiously and must find out whether there is consistency particularly in material particulars therein. In case there are inter-se discrepancies in the depositions of the witnesses given in support of one of the dying declarations, it would not

G

H

A be safe to rely upon the same. In fact it is not the plurality
of the dying declarations but the reliability thereof that
adds weigh to the prosecution case. If the dying
declaration is found to be voluntary, reliable and made
in a fit mental condition, it can be relied upon without any
B corroboration. But the statements should be consistent
throughout. In case of inconsistencies, the court has to
examine the nature of the same, i.e. whether they are
material or not and while scrutinising the contents of
various dying declarations, the court has to examine the
C same in the light of the various surrounding facts and
circumstances. In case of dying declaration, as the
accused does not have right to cross-examine the maker
and not able to elicit the truth as happens in the case of
other witnesses, it would not be safe to rely if the dying
D declaration does not inspire full confidence of the court
about its correctness, as it may be result of tutoring,
prompting or product of imagination. The court has to be
satisfied that the maker was in a fit state of mind and had
a clear opportunity to observe and identify the assailant
(s). [Paras 15, 16 & 17] [541-F-H; 542-A-D]

E
Sanjay v. State of Maharashtra (2007) 9 SCC 148: 2007
(3) SCR 644; *Heeralal v. State of Madhya Pradesh* (2009)
12 SCC 671: 2009 (4) SCR 283; *Smt. Kamla v. State of*
Punjab AIR 1993 SC 374: 1993 (1) SCC 1; *Kishan Lal v.*
F *State of Rajasthan* AIR 1999 SC 3062: 1999 (1) Suppl. SCR
517; *Lella Srinivasa Rao v. State of A.P.* AIR 2004 SC 1720:
2004 (2) SCR 659; *Amol Singh v. State of Madhya Pradesh*
(2008) 5 SCC 468: 2008 (8) SCR 956; *State of Andhra*
Pradesh v. P. Khaja Hussain (2009) 15 SCC 120: 2009 (6)
G SCR 660 and *Sharda v. State of Rajasthan* AIR 2010 SC 408:
2009 (16) SCR 441 - relied on.

H 5. This court has time and again laid down
parameters for interference by a superior court against
the order of acquittal. In exceptional cases where there

are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. [Para 18] [542-G-H]

6. The High Court did not consider the matter in correct perspective nor observed the parameters laid down by this court to interfere against the order of acquittal. The judgment of the High Court is set aside. The judgment of the trial Court is restored. [Paras 19, 20] [543-A-B]

Case Law Reference:

2007 (3) SCR 644	relied on	Para 15
2009 (4) SCR 283	relied on	Para 15
1993 (1) SCC 1	relied on	Para 17
1999 (1) Suppl. SCR 517	relied on	Para 17
2004 (2) SCR 659	relied on	Para 17
2008 (8) SCR 956	relied on	Para 17
2009 (6) SCR 660	relied on	Para 17
2009 (16) SCR 441	relied on	Para 17

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 248 of 2007.

From the Judgment and Order dated 13.09.2006 of the High Court of Judicature of Andhra Pradesh, Hyderabad in Criminal Revision Appeal No. 863 of 2004.

A Rameshwar Prasad Goyal for the Appellant.

D. Mahesh Babu for the Respondent.

The Judgment of the Court was delivered by

B **DR. B.S. CHAUHAN, J.** 1. This appeal has been filed against the judgment and order dated 13.9.2006, passed by the High Court of Andhra Pradesh at Hyderabad in Criminal Appeal No.863 of 2004, by way of which the High Court reversed the judgment and order of the Sessions Judge, C Vijianagaram dated 19.10.2001, passed in Sessions Case No.40 of 2001, by way of which and whereunder the appellant stood acquitted of the charges under Section 302 read with Section 201 of the Indian Penal Code 1860 (hereinafter referred to as the 'IPC').

D 2. Facts and circumstances giving rise to this appeal are that:

A. The appellant had developed intimacy with Ratna Kumari (deceased) and got an inter caste marriage, registered E on 26.10.1991 under the Hindu Marriage Act, 1955. Their married life was not very happy, therefore, Divorce Petition being O.P. No.37/92 was filed and the same was rejected by the Family Court on the ground that one year had not elapsed after their marriage.

F B. Thus, a fresh Divorce Petition, i.e., O.P. No.65 of 1992 was filed on 31.12.1992. Their marriage was dissolved and the appellant and deceased stood separated. There was no child out of the said wedlock.

G C. The deceased was a well qualified woman as she has obtained M.Com., LL.B. qualification. In order to earn her livelihood, she had been giving tuitions to the students in a rented premises i.e. House no.754, Phoolbagh Colony, Vijianagaram. The appellant, as alleged, in spite of their divorce, H was having visiting terms with the deceased.

D. On 15.4.2000, Ratna Kumari was admitted in the Govt. A
Headquarter Hospital, Vijianagaram at 1.30 p.m. with 44%
burns. Her statement/complaint was recorded by the head
constable of police wherein she had stated that a stove full of
kerosene oil fell upon her and thus, she suffered burn injuries.
On the basis of the same an FIR was registered. B

E. On the same day, her dying declaration was recorded
by the Executive Magistrate after getting certificate of fitness
from the Doctor, wherein a similar statement had been
recorded. She remained admitted in the hospital. C

On 28.4.2000, her another dying declaration was recorded
by the Executive Magistrate wherein she alleged that on
14.4.2000 at about 1.30 p.m. while the deceased was cooking
food and all the students had gone home, the appellant poured
kerosene on her body and threw the burning stove on her, due D
to which she received severe burn injuries. The deceased
raised hue and cry which attracted some of the neighbours.

F. Ratna Kumari (deceased) expired on 3.6.2000 in the
hospital and on getting the information, the police altered the
FIR into Section 302 and 498A IPC. The doctor conducted the
post mortem and opined that the cause of death was
septicemia shock due to ante-mortem burns. E

G. After necessary investigation, the police filed charge
sheet on 2.12.2000 against the appellant and his parents for
offences under Sections 302 and 498A IPC. After committal
of the proceedings, the trial commenced on 6.8.2001. After
conclusion of the trial, the Trial Court vide judgment and order
dated 19.10.2001 acquitted all the accused observing that
prosecution could not prove any case whatsoever against G
either of them as there was no iota of evidence to show the
involvement of either of them.

H. Aggrieved, the State preferred Criminal Appeal No.863
of 2004 before the High Court of Andhra Pradesh at H

- A Hyderabad. The court dismissed the appeal against the parents of the appellant at the stage of admission itself. The appeal was admitted only qua the appellant. The appeal of the State has been allowed by the High Court vide judgment and order dated 13.9.2006, convicting the appellant under Section 302 IPC and
- B awarding the sentence to undergo life imprisonment and to pay fine of Rs.5,000/-, in default, to undergo further S.I. for a period of one year. Appellant was acquitted of all other charges.

Hence, this appeal.

- C 3. Shri H.S. Phoolka, learned senior counsel appearing for the appellant has submitted that admittedly after the marriage the parties had separated themselves and therefore, there was no question of living as husband and wife even after 8 years of their divorce. Just immediately after the incident when Ratna
- D Kumari, deceased was taken to the hospital, she lodged a complaint/FIR which was recorded by the Head Constable though after her death the same was treated as her dying declaration. On the same day, her dying declaration was also recorded by the Executive Magistrate and both these dying
- E declarations clearly speak non-involvement of the appellant or anybody else. It is a clear case of accident. The deceased was tutored by her mother and hence in third dying declaration, the appellant and his parents were enrope, in the offence. The declaration dated 28.4.2000 is self contradictory. The appeal
- F deserves to be allowed.

4. Per contra, Shri Nachiketa Joshi, learned counsel appearing for the State has submitted that the High Court has appreciated the evidence and the dying declarations of Ratna (deceased) recorded on 15.4.2000 and on 28.4.2000, and the
- G latter clearly involved the appellant and his parents. The High Court has taken a lenient view and did not admit the appeal against the parents of the appellant. While deciding the appeal, the High Court has met all the parameters laid down by this Court for interfering against the order of acquittal. Hence, the
- H appeal is liable to be dismissed.

5. We have considered the rival submissions made by A
learned counsel for the parties and perused the record.

The FIR/dying declaration recorded on 15.4.2000 reads
as under:-

"I belong to Phoolbagh Colony, Vijianagaram. I married 10 B
years back with Ramana of Kamma while I was studying
at Tirupathi. After one year living together, we got divorced
through Vijianagaram District. I am living alone and gave
tuitions to children and studying law. I forgone my relation C
with my own people. There are nobody of my own.
Yesterday on 14.04.2000 night at about 8 hours time the
current was cut off. I lit my kerosene stove and prepared
tea. In the darkness my polyster saree worned by me got
fire and my entire body, chest, hands, face, legs, foot and
some portion of the stomach were burnt. I phoned to my D
known friend i.e. Bhadragin Lalita of Pradeep Nagar. She
came and took me to the Pradeep Nagar. By then I
purchased ointment and applied it. Not cured. Today i.e.
15.04.2000 morning by 10 hours I came to Government
Hospital, Vijianagaram with the help of my friend E
Bhadragin Lalitha. Nobody is aware due to air and rain
while I was burning. I poured water and put of. Then I felt
nothing. Doctor gave medicines." (Emphasis added)

The Doctor has put an endorsement on the declaration that F
she was fit to make the declaration and signed the same. The
declaration bears signature of the maker (deceased) and the
person recording the same.

6. The dying declaration recorded by the Executive
Magistrate dated 15.4.2000 reads as under: G

"Yesterday night at about 8 hours when I was litting
the kerosene stove to prepare tea, huge winds are coming
in the meanwhile my saree was burnt and flames came
out. Likewise my body was burnt. I have no children. I got H

- A divorced with my husband through Court ten years back. I alone present when this happened. There are no disputes in between myself and my husband. My husband never came to my house after divorce. There are no disputes between myself and neighbours. Though I raised cries none of neighbours came as huge winds are flowing. Hence it might not be heard. My friend Lalitha took me to the Hospital. As myself has poured water vessel on me available in the kitchen. The flames were put of. I have no relationship with my parent-in-law's house. This is happened unexpectedly. No body did this." (Emphasis added)

This declaration also contains the endorsement by the Doctor in respect of the fit condition of the maker. It bears the signature of the deceased and the Executive Magistrate.

- D 7. However, in the third dying declaration made on 28.4.2000 before the Magistrate, she has stated that she had been brought to the hospital by her husband Ravi, mother-in-law Lolitha, and father-in-law Gangaraju. That they got married on 26.10.1991. She was preparing food on kerosene stove in the mid day between 1.30 to 2.00 p.m. on 14.4.2000. Her husband asked her whether she had paid the electricity bill. She replied that she could not deposit as the office was closed. Her husband sent one student, namely Matcha Basava Raju to the electricity office to see whether it was opened or closed. He came back and answered that it was closed. However, there was exchange of words between them. He took up a kerosene tin lying there and poured the kerosene on her shoulders and immediately threw her on the burnt stove. She got burn injuries. Her husband took the water from the bath room and poured on her. Srinu, a next door neighbour came there and also poured water on her. The flames were put of. No neighbour came except Srinu. Her husband requested Srinu not to reveal anything about the incident to anybody. Her husband arranged some medicines and gave injections to her. He gave her tablets

frequently. He had given six injections within a period of 3 days at home. Her parents-in-law came from Rajahmundry on 15.4.2000. They also requested the deceased not to reveal anyone about the incident. On 16.4.2000, her husband and parents-in-law took her to a private hospital. The doctor gave her glucose and one injection. On the same day at about 12 noon, she was taken to Government hospital on cot by her husband and in-laws and thereafter, none of them could be found. She had earlier made a statement before the police as narrated by her husband and in-laws. She has no consciousness to such extent, but the persons were visible. Previously, the police or Magistrate had not taken any statement forcibly from her.

8. The first two dying declarations were made in the Government Headquarter Hospital, Vijianagaram and the Magistrate had reached there on being called by the police. There is no inconsistency between the first two dying declarations and it is evident from the said dying declarations recorded on 15.4.2000 that both of them had been recorded in the Government Headquarter Hospital, Vijianagaram.

The third dying declaration makes it evident that on 15.4.2000 she had not been taken to the Government Hospital and her in-laws were not available on 14.4.2000. Her husband had been treating her at home and had also given her injections for two-three days. Her parents-in-laws reached on 15.4.2000 from Rajahmundry and then she was admitted to the private hospital on 16.4.2000. As she could not recover therein, then she was transferred to Government Headquarter Hospital, Vijianagaram on that day.

9. Satyavarapu Anasuya (PW.1), mother of the deceased has deposed that Ratna (deceased) used to tell her that she was harassed by her husband to bring dowry, though she had given sufficient dowry at the time of marriage. She came to know about the burn injuries of her daughter on 15.4.2000 and immediately went to the Government Hospital. There she found

- A the appellant and his parents. On being asked, Ratna Kumari told her that she suffered the burn injuries by accident. Ten days later, she told the witness that the appellant poured kerosene on her and pushed her on a burning stove, that is why she sustained burn injuries. That her another daughter was a police constable and therefore, the appellant apprehended some action by the police against him and his parents. She has further deposed that prior to the death of her daughter, the appellant had developed illicit relationship with another woman just after Sankranthi festival and she had been informed about this by her daughter that appellant wanted to marry that woman.

10. Kondru Srinivasrao (PW.7), a second year student and neighbour of the deceased used to come for tuition to the deceased. He deposed that he had heard shrieks coming from the house of Ratna and reached the place of occurrence. He found Ratna in bath room and appellant was pouring water on her. On her request, the witness also brought water from the well and given to the appellant who poured the water on her. He has further deposed that he had not told about this incident to anybody.

11. Matcha Basavaraju (PW.8), a young student coming for tuition to the deceased deposed that he was not knowing the husband of Ratna but he had seen the appellant going on his scooter in Phoolbagh colony. He had never seen the appellant in the house of Ratna.

12. Dr. Ch. Suryanarayana (PW.16) deposed that he had signed the dying declaration dated 28.4.2000. That Ratna was having 44% of burns. The record of the hospital revealed that she had been admitted in the hospital on 14.5.2000 and had been given regular treatment and blood many times between 14.5.2000 and 31.5.2000. As per the hospital record she had been brought there by Lalita, a friend of Ratna (deceased). She had given the name of her husband as Ramana and it has further been mentioned in the hospital record that the patient herself had stated that she suffered with burn injuries

accidentally.

A

13. The Trial Court has found material inconsistencies in the case of the prosecution and did not see any reason whatsoever to rely upon the dying declaration dated 28.4.2000 as the contents thereof were admittedly false and could not be relied upon. If the dying declaration has been recorded by the Executive Magistrate on 15.4.2000 in the Government hospital, the question of her being treated by her husband for 2-3 days and then her admission in a private hospital did not arise at all. Her version that she was admitted to the Government Headquarter hospital, Vijianagaram on 16.4.2000 could not be true. The contents of the dying declaration dated 28.4.2000 being full of contradiction do not inspire confidence.

B

C

14. Admittedly, there was a divorce between the parties. Therefore, the question of demand of dowry or ill-treatment or harassment could not arise after 8 years of divorce decree by the court. The mother of Ratna has deposed about the illicit relationship of the appellant and another woman and the appellant wanted to marry that woman. In case the parties had separated by a divorce through court, we fail to understand how Ratna (deceased) or her parents were concerned about such a relationship.

D

E

15. It is a settled legal proposition that in case there are apparent discrepancies in two dying declarations, it would be unsafe to convict the accused. In such a fact-situation, the accused gets the benefit of doubt. (Vide: *Sanjay v. State of Maharashtra*, (2007) 9 SCC 148; and *Heeralal v. State of Madhya Pradesh*, (2009) 12 SCC 671).

F

16. In case of plural/multiple dying declarations, the court has to scrutinise the evidence cautiously and must find out whether there is consistency particularly in material particulars therein. In case there are inter-se discrepancies in the depositions of the witnesses given in support of one of the dying declarations, it would not be safe to rely upon the same. In fact

G

H

- A it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case. If the dying declaration is found to be voluntary, reliable and made in a fit mental condition, it can be relied upon without any corroboration. But the statements should be consistent throughout.

17. In case of inconsistencies, the court has to examine the nature of the same, i.e. whether they are material or not and while scrutinising the contents of various dying declarations, the court has to examine the same in the light of the various surrounding facts and circumstances. In case of dying declaration, as the accused does not have right to cross-examine the maker and not able to elicit the truth as happens in the case of other witnesses, it would not be safe to rely if the dying declaration does not inspire full confidence of the court about its correctness, as it may be result of tutoring, prompting or product of imagination. The court has to be satisfied that the maker was in a fit state of mind and had a clear opportunity to observe and identify the assailant (s).

- E (Vide: *Smt. Kamla v. State of Punjab*, AIR 1993 SC 374; *Kishan Lal v. State of Rajasthan*, AIR 1999 SC 3062; *Lella Srinivasa Rao v. State of A.P.*, AIR 2004 SC 1720; *Amol Singh v. State of Madhya Pradesh*, (2008) 5 SCC 468; *State of Andhra Pradesh v. P. Khaja Hussain*, (2009) 15 SCC 120; and *Sharda v. State of Rajasthan*, AIR 2010 SC 408).

18. This court has time and again laid down parameters for interference by a superior court against the order of acquittal. In exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.

19. The High Court did not consider the matter in correct A
perspective nor observed the parameters laid down by this
court to interfere against the order of acquittal.

20. In view of the above, the appeal is allowed and the B
judgment and order of the High Court is set aside. The judgment
and order of the Sessions Court is restored. The appellant is
on bail. His bail bonds stand discharged.

B.B.B.

Appeal allowed.