

SHARDA

v.

STATE OF RAJASTHAN

(Criminal Appeal No. 699 of 2008)

DECEMBER 15, 2009

[AFTAB ALAM AND DEEPAK VERMA, JJ.]

Dying declaration: Three dying declarations – First and second dying declarations recorded by police in the presence of doctors in quick succession – Consistent statements made by deceased that she received burn injuries accidentally and she held no one responsible for the incident – Third dying declaration in question-answer form recorded by magistrate after three days – Deceased stating that appellant-mother-in-law poured kerosene on her – There were overwritings in the third dying declaration and some dates were scored out to put new dates – This create doubt with regard to its correctness and veracity – The first and second dying declarations were more reliable and credible – Third dying declaration neither inspired confidence nor wholly trustworthy to sustain conviction of appellant – Penal Code, 1860 – s.302.

Prosecution case was that on 16.8.1999 deceased was set on fire by appellant who was her mother-in-law which resulted in her death on 19.8.1999. Three dying declarations were recorded. The first was Ex.D-3 recorded by PW-22, ASI in the presence of PW-31, doctor. The second dying declaration was Exh.P.3 recorded by PW-20, SI in the presence of doctor. In the first and second dying declaration, deceased stated that she received burn injuries accidentally. The third dying declaration Exh.P.18 was recorded by magistrate, in which she stated that kerosene was poured on her by appellant.

A Trial court convicted the appellant under s.302 IPC on the basis of third dying declaration. High Court affirmed the same. Hence the present appeal.

. Allowing the appeal, the Court

B HELD: 1.1. PW-31 deposed that on 16.8.1999, he was posted as Surgeon in Deen Dayal Upadhyay Hospital. That day deceased was admitted in the hospital on account of burn injuries sustained by her. She had given her statement which was recorded in his presence, marked as D-3. The same bore his signature and thumb impression of deceased. In the cross-examination of PW-31, he categorically deposed that during the time her statement was recorded, she was mentally alert and was in a condition to get her statement recorded. He further admitted that the said statement was not recorded under pressure from anyone and was given on her own free will and accord. He further clarified that in Exh. D-3, her first dying declaration, she had stated that while cooking food, on Primus stove, she pumped air which inflamed the same, her clothes accordingly caught fire and she sustained burn injuries. She further stated that no one had set her on fire. Thus, his cross-examination fully established that deceased sustained burn injuries on her own while cooking food and did not fasten liability on anyone else much less on the appellant. PW-22 categorically deposed the manner in which statement of deceased was recorded in Exh. D-3. He also deposed that at that time P.W.31 was also present who certified her to be in mentally fit and proper condition to get the same recorded. From the evidence, it is crystal clear that the first dying declaration of deceased Ex.D-3 stood fully corroborated from the evidence of P.W-22 and P.W-31. [Paras 21 and 24] [450-B-H; 451-A]

H 1.2. Critical examination of the second dying

declaration also shows that deceased had stated that after cooking meals in the evening she was trying to extinguish the stove, but it got inflamed and her nylon saree caught fire. No one had put her to fire and no one should be blamed for it. Perusal of the same would show that these two statements were consistent and were made by her, before being tutored by anyone. [Para 25] [451-B-C]

1.3. The third dying declaration was in question-answer form but perusal of the original record clearly showed that it had many over-writings and some dates were scored out to put new dates. This itself created a doubt in mind with regard to correctness and veracity thereof. This was recorded on 19.8.1999 whereas two earlier statements Exh.D-3 and Exh. P-3 were recorded on 16.8.1999 in quick succession, soon after the incident. Exh. P-3 has been signed by P.W-19, father of the deceased. While putting his signatures on the dying declaration of the deceased, his daughter, he did not raise any objection that it was not the statement given by deceased. He kept quiet. However, when he was confronted with his signatures on it at the time of his cross-examination, he gave an explanation that since many papers were being signed at the time of discharge, he signed it without knowing the contents thereof. Apparently, this appears to be a false and baseless explanation, which at this point of time is certainly not acceptable and would amount to an after-thought. No prudent man would put his signatures on any document without going through the same. Thus, it is clear that if the complainant had any grievance with regard to foul-play having been played by the accused then obviously, he would have brought it to the notice of the police immediately. Not having done so, speaks volumes on the conduct of the complainant party. [Paras 26 and 28] [451-D-F, H; 452-A-D]

A 2. There is yet another factor which would completely
discredit the last dying declaration Exh. P-18. For the first
time, a written complaint was sent by the cousin of
deceased to the Deputy Superintendent of Police only on
19.8.1999. This would go to show that between 16.8.1999
B to 19.8.1999, until her third and last dying declaration was
recorded, they never suspected that she has been burnt
by appellant. Their silence during this period is indicative
of the fact that they were also under the impression that
deceased had caught fire only by accident and it was not
C her mother-in-law who was perpetrator of the crime.
Cumulative effect of this would lead to an irresistible
conclusion that Exh. P-18 is not sufficient to hold the
appellant guilty of commission of offence under Section
302 IPC. It neither inspires confidence nor is wholly
trustworthy to sustain the conviction of the appellant. It
D was an after-thought and was got prepared after the
deceased appeared to have been tutored to say so by her
parents. In the light of this, it has to be completely ignored.
[Paras 29 and 30] [452-D-H]

E 3. Though a dying declaration is entitled and is still
recognized by law to be given greater weightage but it
is relevant to note that accused has no chance of cross-
examination. Such a right of cross-examination is
essential for eliciting the truth as an obligation of oath.
F This is the reason, generally, the court insists that the
dying declaration should be such which inspires full
confidence of the court of its correctness. The court has
to be on guard that such statement of deceased was not
as a result of either tutoring, prompting or product of
G imagination. The court must be further satisfied that
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 aforesaid requirement and
also to the fact that declaration was true and voluntary,

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undoubtedly, it can base its conviction without any further corroboration. It is not 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 34] [453-E-H; 454-A]

State (Delhi Administration) v. Laxman Kumar & Ors (1985) 4 SCC 476, relied on.

4. Exh. P-18 cannot be treated as wholly trustworthy as it is shrouded by many doubts. On the other hand, Exh. D-3 and P-3 are more reliable and credible. Going by the same would fully establish that the deceased had not implicated in the same anyone much less the appellant. [Para 35] [454-G]

Case Law Reference:

(1985) 4 SCC 476 relied on Para 34

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 699 of 2008.

From the Judgment & Order dated 25.7.2007 of the High Court of Judicature for Rajasthan at Jodhpur in DB Criminal Appeal No. 1071 of 2003.

R.D. Upadhyay, Harishnakar Saran, Asha Upadhyay for the Appellant.

Dr. Manish Singhvi, AAG, Devanshu Kumar Dewedi, Milind Kumar for the Respondent.

The Judgment of the Court was delivered by

DEEPAK VERMA, J. 1. The solitary question that arises for consideration in this appeal is whether any one of the three dying declarations of deceased Sarla, inspires confidence, to sustain conviction of appellant Sharda, her mother-in-law for

A commission of offence under Section 302 of the I.P.C and sentence of life imprisonment.

B 2. Appellant has been found guilty of commission of offence under Section 302 of the IPC and has been awarded life imprisonment by learned Additional District and Sessions Judge, Dungarpur. On D.B. Criminal Appeal No. 1071/2003 being filed by her in the High Court of Judicature for Rajasthan at Jodhpur, the same has been dismissed vide order dated 25.7.2007. Thus Judgment of conviction and sentence awarded by the Trial court has been affirmed. Hence, this appeal after grant of leave to the appellant.

C 3. Thumb-nail sketch of the facts of the case is as mentioned herein below:-

D Vinod Vyas was married to Sarla on 21.1.1991, almost 8 years prior to the date of occurrence, which had taken place on 16.8.1999 at the matrimonial home of the deceased.

E 4. According to the prosecution story, for past two-three years, relations between deceased Sarla, her husband-Vinod and appellant-Sharda were strained. They used to demand dowry from her which she was not able to accede to. On 16.8.1999, deceased Sarla was alleged to have been set on fire by her mother-in-law while she was cooking food on a kerosene stove as a result of which she had sustained 90% burn injuries. She was immediately rushed to General Hospital, Sagwara.

F 5. On getting the aforementioned information on 16.8.1999, P.W-22 Kishore Singh posted as ASI at the Police Station Sagwara rushed to the General Hospital. He reached there at about 9 O'clock at night. In the presence of PW-31 Dr. Gokul Prajapati, her first statement Exh. D-3 was recorded.

H 6. As per this first statement, Sarla disclosed that while cooking meals for the family, she pumped in air in the kerosene

stove, which got inflamed thereby *pallu* of her *saree* caught fire. Thus she sustained burn injuries on her person. She further stated that no one had deliberately or intentionally put her on fire. Exh. D.3 is her first statement recorded at the hospital, in presence of P.W-31 Dr. Gokul Prajapati, who had put his signatures on the same along with P.W-22 Kishore Singh. Thumb impression of deceased was also taken on it.

7. P.W-20 -Ranjit Singh was posted as S.I at the Police Station, Varda on the date of incident i.e. 16.8.1999. On receiving the information that Sarla has sustained burn injuries in her matrimonial home, he went to the hospital where Sarla was admitted. However, before going to the hospital, he contacted SDM in his house, so that he could also be taken there for the purpose of recording her statement but was informed by SDM that he was not well, thus would not be in a position to go with him.

8. P.W-20 Ranjit Singh, after reaching hospital recorded another statement of deceased Sarla on the said date marked as Exh P-3. In the said statement, she reiterated that she had sustained burn injuries, while she was trying to extinguish burning stove, after cooking meals, which got inflamed and her *Saree* caught fire. Exh. P-3 bears signatures of Dr. Ravindra Mehta (not examined by prosecution), P.W-2 Ganesh Lal and P.W-20 Ranjit Singh besides the thumb impression of deceased Sarla. This was her second statement in point of time recorded in the Hospital.

9. Since the condition of Sarla had deteriorated, she was referred to Civil Hospital, Ahmedabad. She was accordingly taken there for better treatment. However, she died at Ahmedabad on 19.08.1999.

10. P.W-3 Purushottam, cousin of the deceased had submitted an application on 19.8.1999, on behalf of her grandfather PW-2 Ganeshlal to the Dy. Superintendent of Police,

A Sagwara stating that on the night of Monday, 16.8.1999 Sarla had been set on fire by her husband Vinod and mother-in-law Sharda. This set the investigating agency into motion in registering a case against them initially under Section 498-A and 307/34 of the IPC.

B 11. As per prosecution, before her death, one more dying declaration was recorded by P.W-23 Suresh Chandra Dixit, Executive Magistrate, Ahmedabad, marked as Exh. P-18. This is in question - answer form. In the said last statement, for the first time, she alleged that kerosene was poured on her by her mother-in-law, the present appellant Sharda and she was set on fire by lighting a match-stick. She suffered burn injuries on account of her mother-in-law. When she cried for help, her father-in-law came downstairs and along with other neighbours, tried to extinguish the fire. She was carried to hospital by her father-in-law for treatment. Thus, this would be her third statement at the Hospital at Ahmedabad.

C 12. As mentioned hereinabove, initially on the report being filed at the instance of P.W-2 Ganesh Lal, offence was registered against Sharda under Section 498-A, 307/34 IPC and against her husband Vinod and four other relatives only under Section 498-A of the IPC. However, after her death, charge sheet was filed against appellant under Section 302 of the IPC and against others under Section 498-A/34 of the IPC. Obviously, after her death, all the three statements of the deceased Sarla, Exh. D-3, Ex. P-3 and Exh. P-18 would be treated as her dying declarations.

E 13. To bring home the charges levelled against the accused, prosecution has examined, in all, 31 witnesses. In defence, no witness was examined by the appellant. On appreciation of evidence available on record, as mentioned hereinabove, the trial court recorded the finding of 'not guilty' against other accused including husband of the deceased and they were acquitted but appellant was found guilty of

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commission of offence under Section 302 of the IPC and was awarded life imprisonment. The appeal preferred by her in the High Court was dismissed by Division Bench. Hence, this appeal.

14. It has neither been disputed before us nor was disputed in appeal in the High Court that deceased had met with her death on account of 90% burn injuries sustained in matrimonial home. This even otherwise stands proved from her post-mortem Report Exh. P-22 and evidence of P.W-30 Dr. Ashwini Sanghvi, who had performed post-mortem on her body and has opined that her death was due to Septecimia and shock on account of extensive external burn injuries sustained by her.

15. Now, the question that arises for consideration is whether the present appellant Sharda, mother-in-law of deceased Sarla was the perpetrator of the crime or it was an accidental death.

16. We have already mentioned hereinabove that there are, in all, three dying declarations - Exh.D-3, is first in point of time, Exh P.3, is second in point of time and Exh. P.18, is the third and last in point of time recorded by Executive Magistrate, Ahmedabad.

17. Since the case revolves around the three dying declarations of deceased Sarla, it is really not necessary to critically examine other evidence as no charge was levelled against this appellant under Section 498-A IPC and the said charge was not found proved against other co-accused.

18. In the light of this, we are not dealing with other prosecution witnesses who have deposed either with regard to demand of dowry or harassment of the deceased by the appellant for the same as the same is not germane to the facts of this case.

19. However, we would start with the first dying declaration of deceased Sarla recorded at 9.00 p.m on 16.8.1999 by P.W-

A 22 Kishore Singh. It was recorded in presence of P.W-31 Dr. Prajapati.

B 20. Even though PW-31 was examined by the prosecution to prove Exh. D-3, but surprisingly neither the trial court nor the High Court cared to go through his evidence and to discuss the same at all. Thus, it is necessary for us to discuss the same in detail.

C 21. Dr. Prajapati has deposed that on 16.8.1999, he was posted as Surgeon in Deen Dayal Upadhyay Hospital. That day Sarla w/o Vinod Vyas resident of Tamtiya, P.S. Varda, was admitted in the hospital on account of burn injuries sustained by her. She had given her statement which was recorded in his presence, marked as D-3. The same bears his signature and thumb impression of Sarla.

D 22. In his cross-examination, he has categorically deposed that during the time her statement was recorded, she was mentally alert and was in a condition to get her statement recorded. He has further admitted that the said statement was not recorded under pressure from anyone and was given on her own free will and accord. He has further clarified that in Exh. E D-3, her first dying declaration, she had stated that while cooking food, on Primus stove, she pumped air which inflamed the same, her clothes accordingly caught fire and she sustained burn injuries. She further stated that no one had set her on fire.

F 23. Thus, his cross-examination fully establishes that she had sustained burn injuries on her own while cooking food and has not fastened liability on anyone else much less on the present appellatant.

G 24. To further corroborate Exh. D-3, the evidence of PW-22 Kishore Singh is on record. He has categorically deposed the manner in which statement of deceased was recorded in Exh. D-3. He has also deposed that at that time P.W.31 Dr. Gokul Prajapati was also present who certified her to be in

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mentally fit and proper condition to get the same recorded. From the aforesaid evidence, it is crystal clear that the first dying declaration of deceased Ex.D-3 stood fully corroborated from the evidence of P.W-22 and P.W-31. A

25. Now, we shall take up her second dying declaration recorded by P.W-20 Ranjit Singh marked P-3 on 16.8.1999. Critical examination of the same also shows that deceased had stated that after cooking meals in the evening she was trying to extinguish the stove, but it got inflamed and her nylon saree caught fire. No one had put her to fire and no one should be blamed for it. Perusal of the same would show that these two statements are consistent and have been made by her, before being tutored by anyone. B C

26. Now, we shall deal with Exh. P-18, her last statement recorded at Ahmedabad in presence of P.W-23 Suresh Chand Dixit, Executive Magistrate. We have critically gone through the same. We have also examined the reasons assigned by Trial Court and High Court while treating this dying declaration, Exh P-18, as wholly trustworthy. No doubt, it is true that the same is in question - answer form but perusal of the original record clearly shows that it has many over-writings and some dates have been scored out to put new dates. This itself creates a doubt in mind with regard to correctness and veracity thereof. It is also to be noted that this was recorded on 19.8.1999 whereas two earlier statements Exh. D-3 and Exh. P-3 were recorded on 16.8.1999 in quick succession, soon after the incident. D E F

27. Thus, the question still arises whether any weightage can be given to Exh.P-18 which was recorded in presence of the Executive Magistrate or it has to be completely given a go-by so as to give more credence to Exh. D-3 and P-3 her earlier statements recorded by the police in presence of doctors. G

28. It is pertinent to mention here that Exh. P-3 has also been signed by P.W-19 Raman Lal, father of the deceased. H

A Surprisingly, while putting his signatures on the dying
 declaration of the deceased, his daughter, he had not raised
 any objection that it was not the statement given by deceased.
 He kept quiet. When he was confronted with his signatures on
 it at the time of his cross-examination, he gave an explanation
 B that since many papers were being signed at the time of
 discharge, he signed it without knowing the contents thereof.
 Apparently, this appears to be a false and baseless
 explanation, which at this point of time is certainly not
 acceptable and would amount to an after-thought. No prudent
 C man would put his signatures on any document without going
 through the same. Thus, it is clear that if the complainant had
 any grievance with regard to foul-play having been played by
 the accused then obviously, he would have brought it to the
 notice of the police immediately. Not having done so, speaks
 D volumes on the conduct of the complainant party.

29. There is yet another factor which would completely
 discredit the last dying declaration Exh. P-18. For the first time,
 a written complaint was sent by the cousin of deceased to the
 Deputy Superintendent of Police only on 19.8.1999. This would
 E go to show that between 16.8.1999 to 19.8.1999, until her third
 and last dying declaration was recorded, they never suspected
 that she has been burnt by her mother-in-law, the present
 appellant. Their silence during this period is indicative of the
 fact that they were also under the impression that deceased
 F had caught fire only by accident and it was not her mother-in-
 law who was perpetrator of the crime.

30. Cumulative effect of the aforesaid leads to an
 irresistible conclusion that Exh. P-18 is not sufficient to hold the
 appellant guilty of commission of offence under Section 302 of
 G the IPC. It neither inspires confidence nor is wholly trustworthy
 to sustain the conviction of the appellant. It was an after-thought
 and has been got prepared after the deceased appears to
 have been tutored to say so by her parents. In the light of this,
 it has to be completely ignored which we accordingly do so.

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31. In other words, we place greater reliance on Exh. D-3, and Exh. P-3, her two earlier dying declarations which are not only consistent but also inspire confidence.

32. In the case in hand, the conviction of the appellant is based on the last dying declaration Exh.P-18, said to have been recorded in presence of Executive Magistrate. The principle on which dying declarations are 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.”

33. It is indicative of the fact that a man who is on a death bed would not tell a lie to falsely implicate an innocent person. This is the reason in law to accept the veracity of her statement. It is for this reason, the requirements of oath and cross-examination are dispensed with. Besides, if the dying declaration is to be completely excluded in a given case, it may even amount to miscarriage of justice as the victim alone being the eye-witness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence.

34. Though a dying declaration is entitled and is still recognized by law to be given greater weightage but it has also to be kept in mind that accused had no chance of cross-examination. Such a right of cross-examination is essential for eliciting the truth as an obligation of oath. This is the reason, generally, the court insists that the dying declaration should be such which inspires full confidence of the court of its correctness. The court has to be on guard that such statement of deceased was not as a result of either tutoring, prompting or product of imagination. The court must be further satisfied that 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 aforesaid requirement and also to the fact that declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It is not an absolute

A 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.

In this regard, we may profitably quote the following para from (1985) 4 SCC 476 titled *State (Delhi Administration) Vs Laxman Kumar & Ors* :

“40. We have also come to the conclusion that the High Court failed to take into account one material aspect while appreciating the evidence of the prosecution witnesses. It is a fact that Sudha had been burnt and according to the medical opinion that was to the extent of 70%. As the evidence shows, Sudha was in her senses and was capable of talking at the time when she was being removed to the hospital or even after she had been admitted as an indoor patient. The two sisters or their respective husbands had no apprehension that Sudha would not live. In case Sudha came round, she was to have lived in the family of her husband. No one interested in the welfare of Sudha was, therefore, prepared to make a statement which might prejudice the accused persons and lead to the straining of relationship in an irreparable way. Therefore, the silence or avoidance to make a true disclosure about the cause of fire particularly so long as Sudha was alive, cannot be over-emphasised an adverse inference drawn by the High Court from the conduct of the sisters was indeed not warranted in the facts of the case.

35. In the light of the aforesaid discussion, we are of the considered opinion that Exh. P-18 cannot be treated as wholly trustworthy as it is shrouded by many doubts. On the other hand, for the reasons recorded herein above, Exh. D-3 and P-3 are more reliable and credible. Going by the same would fully establish that the deceased had not implicated in the same anyone much less the appellant.

36. Thus, we have no doubt in our mind that the impugned

judgment and order of conviction passed by the learned Sessions Judge and confirmed in appeal by the High Court cannot be sustained in law. The same are hereby set aside and quashed. The appeal is allowed accordingly. The appellant is in jail, she would be released forthwith, if not required in any other case.

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D.G.

Appeal allowed.