

(1956) 12 AP CK 0008
In the Andhra Pradesh High Court
In Re: Bagepalls Chengappa

Date of Decision : 18-12-1956

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 309

Citation : (1958) CriLJ 473

Hon'ble Judges : Satyanarayana Raju, J;Chandra Reddy, J

Bench : Division Bench

Judgement

Chandra Reddy, J.—This is a case of a wife's murder. The appellant was charged u/s 302 for the murder of his wife said to have been committed on the 1st April, 1956 and also u/s 309. Indian Penal Code, for attempt to commit suicide after stabbing his wife. The deceased, the daughter of P.Ws. 13 and 4, father and mother respectively was married to the accused a year prior to the occurrence. Ever since she went to live with her husband, the deceased was being beaten and ill-treated by the accused. She often complained to her parents about this maltreated and when she came to her parents' house she was unwilling to go back to her husband on two or three occasions but the parents persuaded her to go to her husband's house.

Ten days before the event, P.W. 13 brought her for a festival. The accused also came there later for the festival. Two days after the festival, the accused wanted to take the deceased with him, but she refused to go protesting that she was suffering in his house. The accused stayed on and both he and his wife used to sleep inside the house. On the night of 31st March, 1956, as usual, the deceased and the accused slept in one room while P.W. 4, another daughter of hers and the younger son slept in the verandah.

P.W. 13 and the eldest son slept in the fields. At about 4 a. m., the deceased rushed out of the room crying that she was stabbed by her husband. These cries attracted P.W. 4, P.W. 5 the sister and P.Ws. U and 7 two of the neighbours to the scene. She told P.W. 6 and others that her husband had stabbed her. These persons went inside the room from which the deceased emerged and found the accused lying in a pool of blood with an injury on his stomach and blood-stained

dagger is his hand. Meanwhile, P.W. 13 on hearing the commotion returned home to be told of what had happened.

The two injured persons, the accused and the deceased, were removed to the hospital at Madanapalle. P.W. 13 who accompanied the injured to Madanapalle went to the house of the village-Munsif of the place, P.W. 11, living within a few furlongs from the hospital and intimated him about the occurrence. Then both of them went to the-hospital and after seeing the victim, the Village-Munsif recorded the statement of P.W. 13 which is marked as Exhibit P-12 the contents of which are as follows:

At about 4 a. m. today there was "balata". The front-door of the house was opened to find out what the "galata" was about. In that house there-were my son-in-law and daughter. They were lying, down unconscious. My daughter was lying unconscious with an injury on the stomach. Intestines came out. My son-in-law also was lying down unconscious with an injury on the stomach.. Immediately, we removed both of them to the Government hospital thinking that they were in a dangerous condition as they were both unconscious. Hence the same is hereby informed.

This was taken down at about 9 a.m. Shortly thereafter, the Village-Munsif sent report to the police and the Magistrate on the basis of Exhibit P-12. Soon after this, a requisition was sent by the Woman Assistant Surgeon in charge of the hospital, P.W. 2, tattle Sub-Magistrate, Madanapalle, P.W. L for recording the dying declarations of the deceased and the. accused.

On receipt of this requisition, the Magistrate proceeded to the hospital and recorded the state merits of the deceased and the accused embodied in Exhibits P-3 and P-4 respectively. In Exhibit P-3, St was stated inter alia that eight days before she went to her father"s house and told her parents that she was not getting on well with the men-folk in her husband"s house and her husband was therefore angry, that on previous Tuesday her husband came-to her parents" house an 1 was questioned by the latter for ill-treating her, that that night her husband lay by her side, that at the break of the day he got up and stabbed her in the stomach with a dagger. Aft stabbing her he still lay there.

In a hurry she got up and came into the yard and fell down. The statement of the accused embodied in Exhibit P-4 is to the same effect, the-only addition being that his father-in-law told him. "I do not send her. You go away" and abused him the previous night and that of the fateful morning he woke tip and asked his wife to accompany him to the village but slit refused to do it. Venkatalakshmamma died in the hospital at about 11 a. m.

On receipt of this information, the police went to the hospital, held an inquest over the body and handed over the body to the doctor for post-mortem examination.

2. There are no direct witnesses to the occurrence and tile prosecution case rests

mainly on circumstantial evidence. The dying declaration is one of the wane circumstances against tile appellant. P.W. 1 the magistrate who took down tile statements of Venkatalakshmamma stated me circumstances in which her statement was recorded. The witness has" spoken to the deponent been quiet coil Scions and talking, that the Woman Assistant Surgcun decertified that the injured woman was conscious and alter satisfying himsali that she was in a condition to give a statement he proceeded to take it down

He questioned her as to his she was injured and she answered and he recorded her statement in her own words. There are no infirmities attaching to this statement. This dying declaration is corroborated by P.Ws. 4, 6 and 7. P.W. 4. the ninths of the girl, alter testifying to the ill-treatment nineteen(by the accused to the deceased and to bringing her to their house for the festival said that the accused also went to tulip house lour days prior to the occurrence and after the lestival he asked her and her husband to send the deceased, but they relused to comply was to the request as the deceased was unwilling to go with the accused. The accused contained to stay in the house and very night the deceased and the accused used t3 sleep in one room while sine and her other children were sleeping outside.

Her husband and the grown-up sons used to sleep in the fields. On the night in question, the accused and deceased slept as usual in one room. Just before day-break, she heard "he deceased crying that she was dying immediately. The deceased came out opening the door and fell down near her ii the verandah. She noticed a stab injury on the abdomen of her daughter and intestines protruding. Hearing the cries of her daughter P.Ws. 6 and 7 1"ving opposite to her house came there. The deceased told P.W. 6 that her husband had stabbed her.

Then, P.Ws. 6 and 7 went into the house. They came back and said that the accused was lying down with a "bichuva" in hand and he had also an injury in his abdomen. Be that as it may, a number of people had gathered, Some time later, her husband and her son, P.W. 12 came there. The deceased was put in a cart and was taken to Madanapalle. P Ws. 5, 6 and 7 confirm the version given by P.W. 4.

3. The plea of the accused in the Courts be-low was one of denial. He also denied having made a statement to the Magistrate. He only admitted that he slept with the deceased that night in the house of his father-in-law.

4. The Sessions Judge acting on the dying declaration and the evidence of P.Ws. 4 to 7 held the accused to Icy and sentenced Irma to death as stated above. He also placed reliance on Exhibit P-4 in support of his conclusion. The sentence of death has come up for confirmation and the accused has preferred the appeal against his convictions and sentences.

5. As already observed above, there are no eye whimsies to the currencies and the prosecution has called in aid certain circumstances, namely, the dying declaration and the by deuce of persons who corroborate the statement of, the

deceased embodied in Exhibit P-3 and also Exhibit P-4. Mr. Sriivasa murthy urged in support of the appeal that the testimony of P.Ws. 4 to 7 should not be accepted as the F. I. R. does not implicate any particular individual.

He also referred to the circumstances that P.W. 4 has not stated in the committing Court that the deceased told them that it was her husband that stabbed her. We do not think we can give effect to the argument. It is true that there is no mention of the name of the person who caused the fatal injuries to the deceased in Exhibit P-12, the F. I. R. The explanation for this omission is furnished by I. W. 11, the Village-Munsif, who recorded Exhibit P-12. He said that he was told by the deceased's father, Appayya, that the accused had stabbed his daughter and then stabbed himself and the latter left him saying that the injured were being brought to the hospital and he was going to the hospital.

He told P.W. 13 that he would go to the hospital, see the injuries and make out a report at the hospital. He then proceeded to the hospital, and seeing the injured persons he became nervous, did not see their injuries and did not make a report of what had taken place before him. He added that he was mentally agitated. Both P.Ws. 11 and 13 asserted that the latter had conveyed to the former a hint about the accused stabbing the deceased.

Be that as it may, it appears from the evidence of P.Ws. 6 and 7 that the deceased when questioned told them that it was her husband that stabbed her. These two are disinterested persons and there is no reason why they should swear falsely against the appellant. Not even a suggestion is made to either of the two as indicative of interestedness. Their evidence appeared to be natural and it had commended itself to the Sessions Judge who had an opportunity to see them and judge about their veracity.

It is true that P.W. 4 has not definitely stated in the committing court that her daughter told them all about "her being stabbed by her husband while in the Sessions Court she testified to the deceased telling them about the person who caused the injuries. It may be that she omitted it because she was not specifically asked about it. However, that is not of much significance in view of the evidence of P.Ws. 6 and 7, if believed. We have no reason to differ from the trial Court as to the appreciation of the evidence of these witnesses.

This evidence furnishes sufficient corroboration to the dying declaration made by Venkatlakshamma. The contents of these documents have already been set out. The statement made by her appears to us to be a true one and even if it had stood alone we would have had no hesitation in basing a conviction on this document.

6. It is true that in *Ram Nath Madhoprasad and Others Vs. State of Madhya Pradesh*, Mahajan, J., observed that

it was not safe to convict an accused person merely on the evidence of a dying declaration without further corroboration because such a statement is not made

on oath and is not subject to cross-examination and because the maker of it might be mentally and physically in a state of confusion and might be drawing upon his imagination while he was making the declaration.

These observations, in our opinion, do not have the effect of laying down the proposition that in no circumstances could a dying declaration be acted upon without independent corroborator). We feel that if on a consideration of all circumstances a Court is convinced that the statement is a true one it is open to it to convict despite there being no corroboration in the true sense. The observation of Mahajani, J., should be understood in the context of the facts of that case. That this is so is evident from the latest pronouncement of the Supreme Court in *Abdul Sattar v. State of Mysore* (S) AIR 1956 SC 168.

7. Bhagwati, J., speaking for the Court after referring to the observations extracted above observed:

We are of the opinion that these observations do not help the appellant at all. In the dying declaration before us, even though the same was incomplete by reason of the deceased not being able to answer further questions in his then condition, the statements so far as they went to implicate the accused No. 1 in the affA.I.R. were quite categorical in character and they definitely indicated that it was the accused No. 1 who had shot the deceased.

There was no question of any incomplete statement so far as that aspect of the case was concerned. The statement in regard to the accused No. 1 having shot the deceased was complete in itself and it could not be said that any further questions would have elicited any information which would run counter to the same. Under the circumstances, the dying declaration, though incomplete otherwise, was complete so far as the accused No. 1 having shot the deceased was concerned and could certainly be relied upon by the prosecution".

We feel that these remarks indicate that if in all the circumstances the dying declaration appears to be a true one there are no obstacles in the way of its being accepted even in the absence of corroboration. As observed by a Full Bench of the Madras High Court in *Guruswami Thevar, In re.* 1940 1 Mad LI 124 : AIR 1940 Mad 196, it is difficult to lay down any hard and fast rule as to when a dying declaration should be acted upon and that each case must be decided on its own facts and surrounding circumstances. If the Court after taking into consideration all the factors feels convinced that the statement is true it could convict the accused although there is no corroboration in the true sense. We feel that this case still holds the domain and its authority has not been shaken in any way by the decision in *Gunendra Nath Mitra Vs. Satish Chandra Hui and Others*, .

8. In Criminal Appeal No. 25 of 1956, Justice Somasundaram and Justice Ramaswamy Goundar of Madras High Court laid down that the object of requiring corroboration for a dying declaration is to convince the mind of the Court about its truthfulness. If without the aid of corroborative evidence the Court is satisfied that the dying declaration represents the real state of affA.I.R.s there is no

reason why corroboration should be insisted upon without giving effect to the document.

9. To the same effect is the view taken by a Bench of the Allahabad High Court in *State Vs. Kanchan Singh and Another*, . Thus, it is not an absolute rule of law that in every case corroboration must be sought for the dying declaration irrespective of the circumstances of the case. In this particular case, we have no hesitation in characterising the statements as a true one. That apart, as already observed above the evidence of P.Ws. 4 to 7, at any rate is and 7 affords sufficient corroboration to that document. There is also the additional circumstance that immediately after the crime was discovered the appellant was found lying with a blood stained dagger in his hand which again lends support to the prosecution case. In this view of the matter, it is not necessary to canvass the correctness or otherwise of the view of the trial Court, that Exhibit P-4 is admissible.

It follows that the conviction of the appellant u/s 302 is correct and does not call for interference. However, we feel that this is not a case in which the extreme penalty of law should be imposed upon the accused. It can be gathered from the evidence of other witnesses that the accused wanted to take his wife to his place. It is only when he did not succeed in his attempts (that he stabbed his wife having had a feeling of frustration. There is also the factor that immediately after he stabbed his wife he wanted to put an end to his own life. In these circumstances, we think the ends of justice will be met by reducing it to life imprisonment.

10. We feel that the conviction and sentence of the accused u/s 309, Indian Penal Code, are well-founded and have to be confirmed.

11. The sentences will run concurrently.