
(2014) 04 AP CK 0121

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 3726 of 2014

Mirza Jawed Ahmed Baig

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 10-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 482
Evidence Act, 1872 — Section 32, 32(1)
Penal Code, 1860 (IPC) — Section 304-B

Citation : (2014) 2 ALD(Cri) 634 : (2015) 2 ALT(Cri) 66

Hon'ble Judges : C. Praveen Kumar, J

Bench : Single Bench

Advocate : Muzaffer Ullah Khan, Advocate for the Appellant

Final Decision : Dismissed

Judgement

C. Praveen Kumar, J.—This Criminal Petition is filed by A-2 and A-3 u/s 482 Cr.P.C., seeking quashing of proceedings in PRC No. 50/2013 on the file of Additional Judicial First Class Magistrate, Nizamabad. A charge sheet came to be filed against the petitioners and another for an offence punishable u/s 304-B IPC.

2. The allegations in the charge sheet are as under: The marriage of Miraj Fatima (deceased) with A-1 took place three years prior to the date of incident. At the time of marriage, the parents of Miraj Fatima gave Rs. 1 lakh cash, 3 tolas gold, 25 tolas silver ornaments worth Rs. 30,000/-, furniture worth Rs. 1 lakhs and cooking utensils costing Rs. 40,000/- as dowry. Both of them lived happily till the birth of first female child. Thereafter, A-1 started harassing Miraj Fatima (deceased) mentally and physically demanding her to get additional amount of Rs. 1 lakhs from her parents. After the birth of second female child, A-2 and A-3 instigated A-1 to harass Miraj Fatima to get additional dowry from her parents. It is specifically alleged that all the three accused tried their level best to take 12 tolas of gold ornaments but were not successful. The accused never allowed Mehraj Fatima (deceased) to visit her parents and did not even allow her to

Speak on phone. On 20-11-2010 L.W. 4 received a phone call from Reshma, who is sister-in-law of Mehraj Fatima, informing them that Mehraj Fatima received burn injuries and was shifted to Government Hospital, Nizamabad. On receipt of said intimation, the informant along with L.Ws. 3 and 5 rushed to the hospital and found their daughter with burns. On enquiry, the injured is alleged to have revealed that A-1 assaulted and abused her, while A-2 and A-3 poured petrol and set her on fire. So doing, the accused warned her not to disclose about the incident to others, failing which they threatened to harass her children. In view of the threat given by the accused, the injured did not inform the manner in which the incident took place either to the Police or to the Magistrates who recorded dying declarations. On coming to know about the manner in which the incident took place, the FIR was altered from Sec. 174 Cr.P.C., to Section 304-B IPC.

3. The learned counsel for the petitioners/A-2 and A-3 submits that even accepting the allegations in the complaint to be true, no offence is made out against the petitioners who are nephew and the sister-in-law of the deceased. He would further submit that the basis for implicating the petitioners is the dying declaration alleged to have been recorded on 7-1-11, which is false and invented for the purpose of this case. Relying upon the earlier two dying declarations of the deceased, he submits that continuation of proceedings against the petitioners would be an abuse of process of law.

4. On the other hand, the learned Additional Public Prosecutor opposed the application contending that when there are more than one dying declaration, each dying declaration has to be separately assessed and evaluated on its own merit and the truthfulness of the dying declarations has to be decided during the course of trial. In view of the same, she submits that inherent power u/s 482 Cr.P.C., cannot be invoked to stifle a legitimate prosecution.

5. Section 32 of the Evidence Act is admittedly an exception to the general rule of exclusion to the hearsay evidence and the statements of a person, written or verbal, of relevant facts, after his death are admissible in evidence if they refer to the cause of his death or to any circumstances of the transaction which resulted in his death. To attract the provisions of Section 32, the prosecution is required to prove that the statement was made by a person who is dead or who cannot be found or whose attendance cannot be procured without an amount of delay or expense or he is incapable of giving evidence and that such statement had been made under any of the circumstances specified in sub-sections (1) to (8) of Section 32 of the Act.

6. The Apex Court in *Ashabai and Another Vs. State of Maharashtra*, while dealing with a case of multiple dying declarations held as under:

It is clear from the above provision that the statement made by the deceased by way of a declaration is admissible in evidence u/s 32(1) of the Evidence Act. It is not in dispute that her statement relates to the cause of her death. In that

event, it qualifies the criteria mentioned in Section 32(1) of the Evidence Act. There is no particular form or procedure prescribed for recording a dying declaration nor it is required to be recorded only by a Magistrate. As a general rule, it is advisable to get the evidence of the declarant certified from a doctor. In appropriate cases, the satisfaction of the person recording the statement regarding the state of mind of the deceased would also be sufficient to hold that the deceased was in a position to make a statement. It is settled law that if the prosecution solely depends on the dying declaration, the normal rule is that the courts must exercise due care and caution to ensure genuineness of the dying declaration, keeping in mind that the accused had no opportunity to test the veracity of the statement of the deceased by cross-examination. As rightly observed by the High Court, the law does not insist upon the corroboration of dying declaration before it can be accepted. The insistence of corroboration to a dying declaration is only a rule of prudence. When the Court is satisfied that the dying declaration is voluntary, not tainted by tutoring or animosity, and is not a product of the imagination of the declarant, in that event, there is no impediment in convicting the accused on the basis of such dying declaration. When there are multiple dying declarations, each dying declaration has to be separately assessed and evaluated and assess independently on its own merit as to its evidentiary value and one cannot be rejected because of certain variation in the other.

7. Keeping in view the principles laid down by the Apex Court with regard to a case where there are more than one dying declaration, I shall now deal with the case on hand.

8. The first dying declaration was recorded by II Additional Judicial Magistrate of First Class, Nizamabad on 20-11-2011 at 11-40 P.M. In the said dying declaration, the deceased stated that on 20-11-2011 at about 10 P.M. while the deceased was cooking, stove got burst resulting in her clothes catching fire and thereafter the body got burnt. The first accused who was in bathroom came to the spot and thereafter she was shifted to the Government Hospital, Nizamabad. Later, the statement of the injured was recorded by SI of Police, II Town Police Station on 21-10-2010, wherein she is alleged to have reiterated what has been stated by her before the Magistrate at Nizamabad. Taking into consideration the nature of injuries sustained by the deceased, Doctors advised the relatives of the injured to shift the injured to Osmania General Hospital, Hyderabad. One Sri K. Suri Krishna, I Metropolitan Magistrate, Hyderabad, was requisitioned to record the statement of the injured on 21-11-2011 at 5-50 P.M. at Osmania General Hospital, Hyderabad. After being satisfied with regard to the mental condition of the deceased, the I Metropolitan Magistrate, Hyderabad, recorded the statement, wherein she stated that A-1 abused her for not cooking properly and in view of the said admonishment, she committed suicide by pouring kerosene and setting herself to fire. On hearing the cries, A-1 came to the spot, poured water, extinguished the flames, brought her to the Government Hospital, Nizamabad and from there she was brought to Hyderabad. The witnesses who were examined by the police during the course of investigation stated that on

receiving information about the incident they rushed to the hospital, where the deceased informed them about the manner in which she received injuries in the hands of the accused. She is alleged to have stated that due to threat given to her children by the accused, she deposed differently before the police and the Magistrates by Smt. Afrani Begum, who is the mother of the deceased stated that on the date of incident, after receiving information, she proceeded to the hospital, where the deceased is alleged to have told her that these two petitioners poured petrol and set fire with a warning that if she discloses about the incident to others they would kill her children. Similar version was given by Md. Kaleemuddin, who is the brother of the deceased and one Md. Ghouse who is nephew of the deceased. The above three witnesses stated that the deceased gave different versions before the police and the Magistrate due to threat from the accused.

9. From the above, it is clear that different versions of the incident have come forward during the course of investigation. The first version was receipt of burn injuries due to burst of stove at 10 P.M. The second statement of the deceased recorded by the investigating officer at 10-30 P.M. revealed that she sustained injuries due to burst of kerosene stove. The third version before the Magistrate at Hyderabad was she herself poured kerosene and set herself on fire and the fourth version in the form of oral dying declaration to the family members of the deceased to the effect that these two petitioners poured kerosene and set fire to the deceased apart from threatening the deceased not to reveal about the incident to others.

10. As seen from the above, the Apex Court in Ashabai's case 2013 (1) ALD (CRL) 814 (SC) (supra) categorically held that where there are multiple dying declarations, each dying declaration has to be assessed separately and evaluated on its own merit as to its evidentiary value and one cannot be rejected because of certain variation in the other.

11. In view of the judgment of the Apex Court referred to above, and having regard to the material available on record, this court is of the view that the inherent power u/s 482 Cr.P.C., cannot be invoked to stifle a legitimate prosecution. Truthfulness or evidentiary value of each dying declaration has to be assessed during the course of trial. At this stage, it cannot be said that the charge sheet is bereft of basic facts constituting an offence punishable u/s 304-B IPC.

12. The Criminal Petition is accordingly dismissed. Miscellaneous applications, if any, shall stand closed.