

(2016) 01 RAJ CK 0035

In the Rajasthan High Court

Case No : Criminal Appeal No. 42/2015 and Criminal Leave to Appeal No. 120/2015

Munni and Others

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 29-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, Section 304-I

Citation : (2016) 01 RAJ CK 0035

Hon'ble Judges : Kanwaljit Singh Ahluwalia and Prakash Gupta, JJ.

Bench : Division Bench

Advocate : Shri Ram Joshi, for the Appellant; Alladdeen Khan, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Kanwaljit Singh Ahluwalia, J.—1. Sanni @ Sanno, received burn injuries on 24.6.2009 at 12:00 PM. She was taken to SMS Hospital, Jaipur and was admitted in the Burn Ward. On the said day, at 4:15 PM. Injury report (Exhibit-P/9) of Sanni @ Sanno was prepared by Dr. Priyanka Sharma (P.W. 9). As per deposition of Dr. Priyanka Sharma (P.W. 9) in the court, Sanni @ Sanno had suffered first to third degree burns and the skin had peeled off from number of places. In the injury report, doctor had noted nature of burns as under:--

"Alleged I/o burn at home on 24.6.2009 at about 11:00

AM, as stated by

(i) 1st to 3rd degree burn with blackening and peeling of skin, few blisters at places, signs of inflammation, with singeing of hair on following parts of body-

a) Lower part of face on cheeks, neck as a whole, with ears, singeing of eyebrows and eyelashes.

- b) Upper of chest and upper 1/3 of anterior abdomen as a whole with few healthy patches on chest.
- c) Back of chest and upper 1/3 abdomen as a whole.
- d) Both upper limbs on anterior arm, forearm, wrist and dorsum of hand as a whole, few patches on right hand palm.
- e) Both lower limbs on knee caps and anterior and medial thigh as a whole.
- f) Perineum in few patches.

Opinion: Dry heat flame burn, fresh indication, total surface area : 40%."

2. Sanni @ Sanno while admitted in the Burn Unit of SMS Hospital, Jaipur, died on 4.7.2009 at 5:40 PM. According to Dr. Ashok Mathur (P.W. 10), who conducted autopsy on the dead body of Sanni @ Sanno, the cause of death was septicemia, shock brought about as a result of ante mortem dry flame burns as mentioned and secondary infection.

3. For setting Sanni @ Sanno on fire, the prosecution had sent Munni wife of Abdul Latif @ Munna, Mohammed Ismile son of Kasim @ Ishaaq, Jammo @ Jamila wife of Mohammad Ismile and Janki Devi wife of Hari Singh Chauhan. All the above four accused were tried by the court of Additional Sessions Judge No. 12, Jaipur Metropolitan, Jaipur and the said court vide impugned judgment dated 15.12.2014 acquitted Mohammed Ismile, Jammo @ Jamila and Janki Devi. However, the court vide impugned judgment held Munni guilty of offence under Section 302 IPC and sentenced her to undergo life imprisonment and to pay a fine of Rs. 5,000/-, in default of payment of fine to further undergo additional six months R.I.

4. Aggrieved against her conviction and sentence, Munni has preferred D.B. Criminal Appeal No. 42/2015. The State of Rajasthan has also instituted D.B. Criminal Leave to Appeal No. 120/2015 (Defect) to assail the acquittal of Mohammed Ismile, Jammo @ Jamila and Janki Devi. We shall decide both the appeal and application for leave to appeal together as in both the cases, the common impugned judgment dated 15.12.2014 has been assailed.

5. The case of the prosecution, in the present case rests on two dying declaration i.e. Exhibit-P/11 and Exhibit-P/19. The statement (Exhibit-P/11) was recorded by ASI, Laxman Ram (P.W. 16), who on the fateful day was posted at Police Station Sodala. The statement (Exhibit-P/19) of Sanni @ Sanno was recorded on 25.6.2009 by Mahendra Singh (P.W. 18), who was then posted as Judicial Magistrate, No. 12, Jaipur Metropolitan, Jaipur. Almost all the witnesses examined by the prosecution to support its case, have turned hostile.

6. Thus, the case of prosecution rest solely on two dying declarations recorded during the course of investigation.

7. Mr. Shri Ram Joshi, the learned counsel appearing for the appellant has

questioned two dying declaration, one recorded by the Investigating Officer and another recorded by the Judicial Magistrate by urging that the deceased Sanni @ Sanno was not capable to make statement and her statement has not been recorded in the presence of the attending doctor. Furthermore, it has surfaced that the deceased had not disclosed to the attending doctor the history of the incident and as to who had put her on fire.

8. Before we examine the arguments raised by the learned counsel for the appellant, it will be necessary for us to recapitulate the facts of the case.

9. ASI, Laxman Ram (P.W. 16) has deposed in the court that on 24.6.2009, he was posted at Police Station Sodala. He got an information from the hospital that Sanni @ Sanno due to burn injuries has been admitted in the Burns Ward of SMS Hospital, Jaipur. Upon receipt of information, this witness reached the Burns Ward, where Sanni @ Sanno was lying on the bed. This witness recorded her statement (Exhibit-P/11). The statement made by Sanni @ Sanno, when translated into English, reads as under:--

"Statement of Smt. Shanno wife of Ibbu @ Ibrahim, by caste Musalman, aged 30 years, resident of Mehnat Nagar, Police Station Sodala, Jaipur.

Stated that Munni makes telephone calls to my husband and says that if you go to your wife then she will administer him poison. She is doing prostitution. She had taken my lottery of Rs. 2 Lakhs. Munni is residing as tenant in our house. Today my husband had gone to earn his livelihood. I was sitting in my house. Munni, Ismile, Janki and Jammu came and Munni poured kerosene oil upon me. She had ignited match-stick. Munni told me not to disclose her name. My husband had gone out to earn his livelihood. He was not at home. I was put on fire. I became unconscious. The occurrence had taken place in the day at 12:00 PM. Munni has put me on fire. My husband is having illicit relations with Munni. My husband is entrapped by Munni."

10. The above statement of Sanni @ Sanno was recorded on 24.6.2009 at 9:00 PM. The case was registered at Police Station Sodala on the same day at 9:30 PM. S.I. Bhagwan Singh (P.W. 17) on 25.6.2009 approached Chief Judicial Magistrate, Jaipur and filed an application (Exhibit-P/16) with the request that dying declaration of Sanni @ Sanno be recorded. On the said application, CJM, Jaipur passed an order and deputed Judicial Magistrate, No. 12, Jaipur to record the statement of Sanni @ Sanno. Mahendra Singh (P.W. 18), who was then posted as Judicial Magistrate No. 12, Jaipur Metropolitan, Jaipur, reached SMS Hospital and recorded the dying declaration (Exhibit-P/19). The said dying declaration bears the endorsement of the doctor that patient is conscious, well oriented and is fit to make statement. The dying declaration (Exhibit-P/19) when translated into English, reads as under:--

"My name is Sanni @ Sanno. The name of my husband is Ibbu. For the last fifteen years my mother-in-law used to quarrel with me. I have been put to fire after pouring kerosene oil. When I was put to fire, my mother-in-law, other

woman of my husband Munni and Janki the tenant were present. My husband at that time was not present at the house. The occurrence had taken place yesterday at 12 PM. I was put to fire after bolting the door. Munni had poured kerosene oil upon me. Munni had ignited the fire by match-stick. My mother-in-law and Janki were standing. Munni had put me on fire then my mother-in-law and Janki poured water.

Question- Why Munni did this to you?

Answer- She is jealous of me and says that your husband loves you more than me. She used to give a threat that she will harm my children.

Question- At the time of occurrence, who was present at the house?

Answer- My children had gone out of the house. My mother-in-law, Munni and Janki were present.

Question- Anything else you want to say?

Answer- My sister Rehana stays with me. She knows everything about the occurrence. I had won lottery of Rs. 2 lakhs. My lottery had been taken away by mother-in-law and Munni. Munni used to call my husband on phone.

My husband is simpleton. Munni has made him to go stray. After fire, I became unconscious.

The above statement has been recorded by me and the same is read over to the witness. She accepted the same to be correct. Whatever was stated by him was truly recorded by me.

RTI of Shanno

Sd/- Judicial Magistrate, No. 12, Jaipur"

11. The above dying declaration says that Rehana sister of the deceased is aware regarding the occurrence. Rehana appeared in the court as P.W. 2. This witness has not supported the prosecution and has turned hostile though she admitted that she and her younger sister were married with two brothers respectively. This witness further stated that she was not having any dispute with her mother-in-law.

12. Neelofar, daughter of the deceased was put to witness box as P.W. 1, however, the court came to the conclusion that she cannot apprehend the questions hence, she is not competent witness, therefore, her deposition was not recorded.

13. Sarfuddin (P.W. 3) father of the deceased has also turned hostile to the prosecution. This witness has also not supported the prosecution. Ahsan (P.W. 4) brother of the deceased also resciled from the previous statement made to the police and he was also declared hostile. Another brother Sadruddin (P.W. 5) has also not advanced the case of the prosecution and he was also declared hostile to

the prosecution. This witness stated that he had no talk with her sister deceased Sanni @ Sanno.

14. Noor Ahmed (P.W. 6) and Irfan (P.W. 7) attesting witnesses to the site plan and recovery of plastic Can and match stick have also not supported the prosecution case.

15. Nizam (P.W. 8) had attested the inquest proceedings.

16. As stated earlier, Dr. Priyanka Sharma (P.W. 9) had medicolegally examined the deceased Sanni @ Sanno at the time of admission and Dr. Ashok Mathur (P.W. 10) had conducted autopsy on the dead body of Sanni @ Sanno and had given opinion regarding death of Sanni @ Sanno, which has already been mentioned in the earlier part of the judgment.

17. Kishan Chand (P.W. 11) stated that on presentation of statement (Exhibit-P/11), he had drawn a formal FIR Exhibit-P/12 bearing No. 222/09 at Police Station Sodala, Jaipur.

18. Saroj (P.W. 12) was posted as female Constable at Police Station Sodala. This witness proved on record the arrest memo of the present appellant.

19. We need not notice the testimony of official witnesses, who were examined to prove various facets of the investigation.

20. Suffice it to say that the prosecution in all had examined eighteen witnesses. Thereafter, the statement of the accused was recorded under Section 313 Cr.P.C. Munni, in her statement recorded under Section 313 Cr.P.C., has denied all incriminating circumstances put to her and stated that she is innocent and has been falsely implicated.

21. No witness has been examined in defence.

22. Mr. Shri Ram Joshi, the learned counsel for the appellant has drawn our attention to the cross-examination of Dr. Priyanka Sharma (P.W. 9), wherein she stated that injury Nos. 1 to 6 on the person of deceased Sanni @ Sanno can also be caused if she commits suicide. The counsel further referred to the cross-examination, wherein Dr. Priyanka Sharma (P.W. 9) stated as under:--

23. The learned counsel for the appellant relying upon the above portion of cross-examination by Dr. Priyanka Sharma (P.W. 9), submitted that the deceased had not disclosed the name of assailants to the attending doctor and it is a case of suicide. We are afraid that we cannot accept this contention of the learned counsel for the appellant.

24. A five Judges Bench of Apex Court in the case of Laxman v. State of Maharashtra (, AIR 2002 SC 2973), held as under:--

"4. "Bearing in mind the aforesaid principle, let us now examine the two decisions of the court which persuaded the bench to make the reference to the Constitution Bench. In Paparambika Rosamma & Ors. v. State of Andhra

Pradesh , 1999 (7) SCC 695 the dying declaration in question had been recorded by a judicial magistrate and the magistrate had made a note that on the basis of answers elicited from the declarant to the questions put he was satisfied that the deceased is in a fit disposing state of mind to make a declaration. Doctor had appended a certificate to the effect that the patient was conscious while recording the statement, yet the court came to the conclusion that it would not be safe to accept the dying declaration as true and genuine and was made when the injured was in a fit state of mind since the certificate of the doctor was only to the effect that the patient is conscious while recording the statement. Apart from the aforesaid conclusion in law the court also had found serious lacunae and ultimately did not accept the dying declaration recorded by the magistrate. In the latter decision of this court in *Koli Chunilal Savji & Another v. State of Gujarat* , 1999(9) SCC 562 it was held that the ultimate test is whether the dying declaration can be held to be a truthful one and voluntarily given. It was further held that before recording the declaration the officer concerned must find that the declarant was in a fit condition to make the statement in question. The court relied upon the earlier decision. In *Ravi Chander v. State of Punjab* , 1998 (9) SCC 303 wherein it had been observed that for not examining by the doctor the dying declaration recorded by the executive magistrate and the dying declaration orally made need not be doubted. The magistrate being a disinterested witness and is a responsible officer and there being no circumstances or material to suspect that the magistrate had any animus against the accused or was in any way interested for fabricating a dying declaration, question of doubt on the declaration, recorded by the magistrate does not arise.

5. The court also in the aforesaid case relied upon the decision of this court in *Harjeet Kaur v. State of Punjab* , 1999(6) SCC 545 case wherein the magistrate in his evidence had stated that he had ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect and merely because an endorsement was made not on the declaration but on the application would not render the dying declaration suspicious in any manner. For the reasons already indicated earlier, we have no hesitation in coming to the conclusion that the observations of this court in *Paparambaka Rosamma & Ors. v. State of Andhra Pradesh* , 1999 (7) SCC 695 to the effect that "in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a magistrate who opined that the injured was in a fit state of mind at the time of making a declaration" has been too broadly stated and is not the correct enunciation of law. It is indeed a hyper-technical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind specially when the magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind where-after he recorded the dying declaration. Therefore, the judgment of this court in *Paparambaka*

Rosamma & Ors. v. State of Andhra Pradesh , 1999 (7) SCC 695 must be held to be not correctly decided and we affirm the law laid down by this court in Koli Chunilal Savji & Another v. State of Gujarat , 1999(9) SCC 562 case."

25. Therefore, in the case, where the dying declaration is recorded by the Magistrate and the Magistrate deposed before the court that injured was fit to make statement and statement was recorded by him, the court has to rely upon the statement recorded by the Magistrate as he is the most independent person.

26. The settled legal position, that soon before the death, maker of the dying declaration will not tell lie is well recognized in criminal jurisprudence. We shall reproduce here the observations made by the Hon"ble Supreme Court for appreciation of the dying declaration in the Paniben v. State of Gujarat, [, (1992) 2 SCC 474], as under:--

"Though a dying declaration is entitled to great weight, it is worthwhile 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 on its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, 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 assailants. 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:

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Munna Raja v. State of M.P., , (1976) 3 SCC 104).

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (State of U.P. v. Ram Sagar Yadav, , (1985) 1 SCC 552), Ramawati Devi v. State of Bihar, , (1983) 1 SCC 211).

(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (K. Ramachandra Reddy v. Public Prosecutor, , (1976) 3 SCC 618).

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (Rasheed Beg v. State of M.P., , (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. (Kake Singh v. State of M.P., 1981 Supp SCC 25).

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

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurti Laxmipati Naidu, 1980 Supp SCC 455).

(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 truth. (Surajdeo Oza v. State of Bihar, 1980 Supp SCC 769).

(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 has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanahau Ram v. State of M.P., 1988 Supp SCC 152).

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (State of U.P. v. Madan Mohan, , (1989) 3 SCC 390)."

27. Taking into consideration the law laid by the Supreme Court in the case of Laxman's case (supra) and Panniben's case (supra), we are of the view that dying declaration (Exhibit-P/11) recorded by Laxman Ram (P.W. 16) and dying declaration (Exhibit-P/19) recorded by Mahendra Singh (P.W. 18) inspire confidence. Before recording the statement, the concerned Magistrate had obtained opinion of the doctor and doctor had declared the patient to be conscious, oriented and fit to give statement. Therefore, no fault can be found with the dying declaration. Even all witnesses have turned hostile, the court where the dying declaration is trustworthy, can record the conviction, relying upon the dying declaration. Therefore, we will sustain the conviction of the appellant Munni on the basis of dying declaration (Exhibit-P/19) recorded by Mahendra Singh (P.W. 18), who was then posted as Judicial Magistrate, No. 12, Jaipur.

28. The learned counsel for the appellant has further contended that the occurrence in the present case had taken place on 24.6.2009 and ten days after the occurrence, on 4.7.2009, at 5:40 PM, the deceased died due to septicemia, therefore, we should convert the offence from Section 302 IPC to Section 304-I IPC.

29. We are also not inclined to accept this argument. It has nowhere come that before the kerosene oil was poured and deceased was put to fire, there was an altercation or exchange of hot words and due to some provocation, accused lost control and put the deceased on fire. From the spot, plastic can of kerosene oil and match-stick have been recovered. Thus, it is apparent that the present

appellant brought kerosene oil and match-stick with an intention to put the deceased on fire. As a result of burn injuries, Sanni @ Sanno died. Hence, no ground is made to convert the offence.

30. We have heard the learned Public Prosecutor in criminal leave to appeal filed by the State assailing the acquittal of Mohammed Ismile, Jammo @ Jamila and Janki Devi.

31. A perusal of two dying declaration reveals that no specific role has been assigned to Mohammed Ismile, Jammo @ Jamila and Janki Devi. In dying declaration, recorded by Judicial Magistrate, it is specifically stated that mother-in-law, Janki and Jummo were standing at the spot. Rather it is stated in the dying declaration that they had made an attempt to douse the fire by putting water. Therefore, for us the reasons recorded by the trial court to record acquittal of Mohammed Ismile, Jammo @ Jamila and Janki Devi are cogent and justifiable.

32. As a result of above discussion, both i.e. the criminal appeal filed by Munni and the criminal leave to appeal filed by the State being devoid of merit, stand dismissed.