

(1994) 11 MP CK 0008
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 877 of 1986

Ramesh Kumar

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 11-11-1994

Acts Referred:

Evidence Act, 1872 — Section 32
Penal Code, 1860 (IPC) — Section 302

Citation : (1978) ILR (MP) 409 : (1995) JLJ 750 : (1995) 1 MPJR 313 : (1995) 40 MPLJ 768 : (1995) MPLJ 768

Hon'ble Judges : Rajeev Gupta, J; P.N.S. Chouhan, J

Bench : Division Bench

Advocate : S.C. Datt, for the Appellant; Dilip Naik, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

P.N.S. Chouhan, J.

Appellant Ramesh Kumar challenges his conviction u/s 302, Indian Penal Code and sentence of imprisonment for life recorded vide judgment dated 25-7-1986 passed in S.T.No. 25/1986 of Bhopal Sessions Division.

The appellant was living with his wife Meera. On 22-9-1985 at about 2.00 P.M. he got annoyed because Meera had not cooked the meals and then poured kerosene oil over her and set her ablaze. Her cries attracted Gorelal, Sukhram, Ramesh and Sunderlal (PWs 3, 9 to 11 respectively) from the neighbourhood. The appellant then took Meera to Jai Prakash Hospital. Dr. (Smt.) Shobha Shrivastava (PW 13) attended on her in the emergency ward. The deceased had told the said Doctor that she was burnt by her husband after pouring kerosene oil over her. An intimation was sent to the T. T Nagar Police Station, Bhopal of the arrival of Meera in a burnt condition from the Panchsheel Nagar which was recorded in Sanha No. 2758 at 14.30 P.M. (Ex.P. 11-A). A.S.I. Shri J. N. Pandey (PW. 16) then reached the hospital and recorded the statement of Meera (Ex. P. 15) in presence of Mashruk Khan (PW 12), Nandlal (PW 15) and Dr. (Mrs.) Shobha

Shrivastava. On his requisition Meera was examined by the said lady Doctor whose report is Ex. P. 17. In the meantime, Meera succumbed to her 80% burn injuries. A.S.I. Pandey then returned to the police station and recorded F.I.R. Ex. P. 21 at 21.10 Hrs. and proceeded to investigate the case. He held inquest vide Ex. P.4, sent the body for post mortem examination vide requisition Ex. P. 19 and recorded the statements of witnesses. Dr. Vijay Mathur (PW 6) conducted autopsy on 23-9-1985 and vide report Ex. P-8 confirmed the earlier finding of Dr. Shrivastava of 80% second degree burns - almost all over the body resulting in cardio-respiratory failure leading to death. He also found smell of kerosene oil in scalp hairs and the remains of petticoat. A 2.5 cm x 1 cm bruise was also detected in the inner aspect of the lower lip. The injuries were found to be ante mortem caused within 24 hours from the post mortem examination. Ex. P. 9 is the diagram depicting the injuries. The appellant admitted that Meera was his wife, but denied his guilt pleading false implication.

During trial aforesaid PWs 3, 9 to 11 turned hostile. The learned trial Judge held the statement of deceased Ex. P. 15, recorded by the Investigating Officer, to be suspect for various reasons enumerated in paras 25 to 27 of the impugned judgment, but found the dying declaration recorded by Dr. (Smt.) Shobha Shrivastava to be a truthful version as to the circumstances of the death of Meera and, therefore, on its basis convicted and sentenced the appellant as aforesaid.

The appellant denied the fact that he had taken his wife in a burnt state to the hospital in his answer to question No. 10 put to him u/s 313 of the Criminal Procedure Code. His contention is that he reached the hospital subsequently and was falsely implicated.

Meera's homicidal death due to 80% burns of second degree has not been assailed. The medical evidence on record proves this fact beyond reasonable doubt.

Appellant's learned counsel argued that Ex. P. 17 is a suspect document and merely on its basis sans corroboration the learned trial Judge was in error to have convicted the appellant on charge of murder. As per the learned counsel, Ex. P. 17 is not the original document as it was given by Dr. (Smt.) Shobha Shrivastava in response to a requisition from the Investigating Officer. The requisition is on the reverse side of Ex. P. 17. Thus, it has to be inferred that Dr. (Smt.) Shobha Shrivastava must have recorded the said dying declaration of Meera in her bed head ticket and subsequently on being approached by the police gave her report Ex. P. 17 on its basis. Since the original bed head ticket has not been produced, Ex. P. 17 is rendered suspicious. It is also not clear as to what questions were put by the Doctor to Meera and what was actually stated by the latter. The contention is that no cross-examination was directed on these aspects even in absence of such cross-examination, the facts that emerge from the circumstances may be presumed in favour of the defence to do justice in the case. In reply, it was argued that Dr. (Smt.) Shobha Shrivastava was on

emergency duty at the pertinent time. After she examined Meera, the patient was transferred to female surgical ward as is clear from the evidence of the said Doctor. In the emergency ward no bed head ticket was prepared. Therefore, the suggestion that the dying declaration was first recorded by the Doctor in the bed head ticket of the patient and Ex. P. 17 was later on prepared on its basis is without foundation. At any fate, the defence was obliged to have cross-examined the said Doctor on these lines when the Doctor would have had the opportunity to dispel doubts being raised at this stage. This not having been done, there is no justification for resorting to surmises to eclipse the evidentiary value of Ex. P. 17. There appears to be absolutely no basis to infer nor could be suggested even remotely during arguments that Doctor (Smt.) Shobha Shrivastava is not a wholly disinterested witness. She was cross-examined at length. Nothing was suggested to her that she prepared Ex. P. 17 on the basis of some other record prepared by her like the bed head ticket. The tenore of her cross-examination suggests that the learned Advocate, representing the defence, was not a novice. Therefore, there appears to be absolutely no justification in this case to resort to surmises to hold that Ex. P. 17 is not the original document. Where justice may require, the Court may indulge in presuming certain facts in favour of the defence, if the circumstances of the case warrant, but in the instant case there appears to be no such compulsion and the course of action suggested by the learned counsel instead of paving the way to justice is most likely to result in miscarriage of justice. It may also be accepted, as urged for the State Government, that bed head ticket is prepared only when a patient is admitted in a ward and not when he or she is examined by a Doctor on emergency duty. We are, therefore, unable to accept the suggestion that Ex. P. 17 is any thing but the original report given by the said Doctor.

The law on the evidentiary value of a dying declaration has been laid by the Supreme Court in *Khushal Rao Vs. The State of Bombay*, thus :

"It cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and in order to test the reliability of a dying declaration, the Court has to keep in view, the circumstances like the opportunity of the dying man for observation, whether the capacity of the man to remember the facts stated, had not been impaired at the time he was

making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties."

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"In order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination. But once, the Court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration. If, on the other hand, the Court, after examining the dying declaration in all its aspects, and testing its veracity, has come to the conclusion that it is not reliable by itself, and that it suffers from an infirmity, then, without corroboration it cannot form the basis of a conviction. Thus, the necessity for corroboration arises not from any inherent weakness of a dying declaration as a piece of evidence, but from the fact that the Court, in a given case, has come to the conclusion that particular dying declaration was not free from the infirmities."

Another case relied on by appellant's learned counsel is State (Delhi Administration) Vs. Laxman Kumar and Others, where the dying declaration, recorded by Investigating Officer, was held to be doubtful inter alia because of non-availability of Magistrate and the Doctor for recording the same could not be proved and on facts the fitness of the deponent to make a declaration was also not free from doubt. We find the present case distinguishable on facts because Ex. P. 17 has been recorded not by the Investigating Officer but by the Doctor who attended the patient in the emergency ward. For similar reasons, we hold Balak Ram Vs. State of U.P., inapplicable. There appears to be no doubt that since Ex. P. 17 is the sole basis for appellant's conviction, its "strictest scrutiny" and "closest circumspection" are warranted before we uphold appellant's conviction as laid down in K. Ramachandra Reddy and Another Vs. The Public Prosecutor, cited by appellant's learned counsel. Before we uphold appellant's conviction, it may be observed that the learned trial Judge was fully aware of this requirement of law while discussing the evidence. As held above, Dr. (Smt.) Shobha Shrivastava is a wholly independent witness. She has stated in the opening para of her evidence that Smt. Meera was brought in J. P. Hospital, Bhopal, by her husband, the appellant. Nothing was asked in cross-examination to challenge her assertion yet we find that the appellant in his cross-examination u/s 313, Criminal Procedure Code has denied this fact that he took his wife in a burnt state to the said hospital. Had Smt. Meera been brought in a burnt state to the hospital by any person other than the appellant, it would have been natural for the Doctor to have mentioned the identity of the escort. We have, therefore,

no doubt that it was the appellant who produced his wife before the said Doctor and has deliberately resorted to lie in this behalf. Though the learned trial Judge has not taken note of this, we are inclined to hold that his denial in this behalf is itself a circumstance which may, in the facts of this case, be considered incriminating and which lends corroboration to the dying declaration contained in Ex. P. 17. From the evidence of the said Doctor, it is clear that she examined Smt. Meera immediately after she was brought there at 2.10 P. M. and found 80% burns on her face, neck, chest, back, both upper extremities and perineum. Her general condition was poor, pulse was 120 per minute, blood pressure 90/60 mm. and that the patient was fully conscious, responding to questions. The said Doctor has also stated that according to the patient, she had been burnt by her husband by pouring kerosene oil. She has proved her report Ex. P. 17 which contains all these data including the dying declaration. Merely because Ex. P. 17 appears to be in response to a requisition issued by the police for examination of the patient, it cannot be said that the same is rendered doubtful for want of the bed head ticket when it is clear from the evidence of the said Doctor that after examination she referred the patient to the surgical ward and the bed head ticket must have been prepared only after her admission in the said ward. We, therefore, conclude that the criticism of Meera's condition being such in which she could not have given the cause of her burning has no basis whatsoever in the evidence. She was in a fit state to give out as to how she came to sustain those burn injuries and she implicated her husband in this connection. A medical Doctor is not supposed to know that a dying declaration is to be recorded in question answer form. May be the said Doctor was not even aware that the statement of patient being recorded by her amounted to dying declaration admissible u/s 32 of the Evidence Act. Therefore, the fact that Ex. P. 17 is not in question answer form will not detract from its evidentiary value.

It was further argued that the Investigating Officer had also recorded a dying declaration Ex. P. 15 in presence of the aforesaid Doctor, but the same was held unacceptable by the learned trial Judge. The prosecutor did not dare to put any question to Doctor (Smt.) Shobha Shrivastava in relation to Ex. P. 15 and this fact renders Ex. P. 17 too infirm incapable of forming a basis of conviction by itself. It is not clear as to why Dr. (Smt.) Shrivastava was not shown Ex. P. 15 but the defence had the opportunity to cross-examine both Dr. (Smt.) Shobha Shrivastava as also the Investigating Officer on this aspect of the case but no such questions were put. In such circumstances, merely because Ex. P. 15 has been found to be doubtful, it cannot be inferred that Ex. P. 17 is also rendered equally doubtful. It may be noted that Ex. P. 15 as admitted by the Investigating Officer (PW 16) was not recorded by him personally, but was got recorded at his instance through Head Constable Hinchlal who was not examined during trial. We, therefore, find that on this account there is no justification to suspect the truth of Ex. P. 17.

Lastly, it was argued that Ex. P. 17 is cryptic and, therefore, in absence of corroboration appellant's conviction on its basis deserves to be set aside. Cryptic

means : as per the Oxford large print dictionary : "concealing its meaning in a puzzling way". Ex. P. 17, after recording pulse, blood pressure etc., read thus : According to patient she has been burnt by her husband by kerosene oil". It is idle to suggest that this disclosure as to the cause of her burn injuries is cryptic. It appears to be a candid and full disclosure of the circumstances which subsequently resulted in her death. The mere fact that the question put by the Doctor in response where to the aforesaid disclosure was made is not on record particularly when the said Doctor was not examined or cross-examined on this aspect is not sufficient to undermine the evidentiary worth of Ex. P. 17 as a dying declaration admissible u/s 32 of the Evidence Act.

We thus find that Ex. P. 17 is a wholly reliable document prepared by a wholly independent witness of status, namely, Dr. (Smt.) Shobha Shrivastava in the course of discharge of her duties as an emergency Doctor in J. P. Hospital, Bhopal. Smt. Meera was fully conscious when she stated before the said Doctor that her husband had burnt her after pouring kerosene oil. The circumstances clearly exclude the possibility of her statement in this behalf being influenced by tutoring or the like. Ex. P. 17 finds indirect support from appellant's denial of the fact that it was he who brought his wife Smt. Meera in a burnt state in J. P. Hospital, Bhopal, on the pertinent date. It is, thus clear that Ex. P. 17 was rightly found truthful and reliable by the learned trial Judge to base the conviction on.

In result, this appeal is held to be devoid of merit and accordingly dismissed.