
(2013) 05 GUJ CK 0009
In the Gujarat High Court
Case No : Criminal Appeal No. 2229 of 2006

Vinodbhai Babubhai Dabhi	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 10-05-2013

Acts Referred:

Citation : (2013) 3 GLR 2063

Hon'ble Judges : K.S. Jhaveri, J;K.J. Thaker, J

Bench : Division Bench

Advocate : P.H. Bach, for the Appellant; J.K. Shah, Assistant Public Prosecutor, for the Respondent

Judgement

K.J. Thaker, J.—The present appellant has preferred this appeal under Sec. 374(2) of the Code of Criminal Procedure, against the judgment and order of conviction and sentence dated 8-8-2006 passed by the learned Presiding Officer, Addl. Sessions Judge, 6th Fast Track Court, Gondal in Sessions Case No. 20 of 2005, whereby, the learned trial Judge has convicted the appellant for the offence under Sec. 302 of I.P.C. and sentenced to undergo R./I. for life, with fine of Rs. 25,000/-, in default, to undergo further R./I. for one month. If the amount of fine is deposited by the appellant, Rs. 20,000/- be given to the mother of deceased by way of compensation under Sec. 357 of Code of Criminal Procedure.

1.1. The case of the prosecution is that on 7-12-2004, at about 9-00 o'clock, the appellant has murdered his wife because she did not give the account of money received from labour work, he set her ablaze by pouring kerosene on her.

1.2. The appellant accused came to be arraigned for committing the murder and after the investigation was complete, the charge-sheet was laid against the appellant. Thereafter, as the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions, which was numbered as Sessions Case No. 211 of 2005.

1.3. Thereafter, the Sessions Court framed the charge below Exh. 1 against the

appellant for commission of the offence under Sec. 302 of I.P.C. The appellant-accused has pleaded not guilty and claimed to be tried.

1.4. To prove the case against the present appellant, the prosecution has examined the following witnesses:

1. Dineshkumar Mohanlal Dadhaniya Exh. 13
2. Vijaybhai Manharlal Karia Exh. 20
3. Ramjibhai Bachubhai Exh. 24
4. Rameshbhai Babubhai Khant Exh. 28
5. Savabhai Ramjibhai Chudasama Exh. 29
6. Maluben Bhikhabhai Rajabhai Chudasama Exh. 30
7. Dr. Arjun Gorabhai Rathod Exh. 33
8. Dr. Mansukhbhai Chhagan Gajera Exh. 36
9. Raghubhai Nagjibhai Bhalgamdiya Exh. 40
10. Ashishkumar Arunbhai Pandya Exh. 45

1.5. The prosecution also relied upon the following documentary evidences so as to bring home the charges against the appellant-accused:

1. Police Yadi Exh. 14
2. Post-mortem Form Exh. 15
3. Post-mortem Note Exh. 16
4. Cause of death certificate Exh. 17
5. Yadi for recording Dying Declaration Exh. 21
6. Remainder yadi for D.D. Exh. 22
7. Original D.D. Exh. 23
8. Arrest panchnama of accused Exh. 25
9. Panchnama of scene of place of offence Exh. 26
10. Xerox copy of D.D. Exh. 27
11. Original complaint Exh. 31
12. Yadi to Executive Magistrate for D.D. Exh. 34
13. Case papers Exh. 37
14. Injury certificate Exh. 38
15. Transfer Form Exh. 39

16. Order for inquiry Exh. 41
17. Yadi to register the offence Exh. 42
18. Abstract of station diary Exh. 43
19. Inquest panchnama Exh. 44
20. Muddamal dispatch note Exh. 47
21. Report Exh. 48
22. Entry No. 14 of station diary Exh. 49
23. Photographs Exh. 50

1.6. At the end of trial, after recording the statement of the accused under Sec. 313 of Code of Criminal Procedure and hearing the arguments on behalf of the prosecution and the defence, the learned trial Judge convicted and sentenced the appellant of the charges levelled against him by judgment and order dated 8-8-2006.

1.7. Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the Sessions Court, the appellant has preferred the present appeal.

2. Learned Advocate for the appellant Mr. Buch has mainly contended that the dying declaration is not believable. There are three dying declarations. He has tried to convince this Court that dying declaration before the doctor should be believed and the complaint by the mother and thumb impression of the deceased is not attested. It is not stated whether she was conscious or not on the next day i.e. when her dying declaration was recorded. He has further contended that the treating doctor was not examined. Mr. such has tried to submit that Executive Magistrate has not certified that patient was conscious or not. He has also contended that though the deceased was alive, the police with ulterior motive has taken the complaint from the mother of the deceased. The charge is not dated by the learned trial Judge and there are no antecedents and the presence of the appellant is not proved.

3. Mr. J.K. Shah learned A.P.P., however, submitted that the trial Court has given cogent and convincing reasons for sustaining the conviction under Sec. 302 of I.P.C. and this Court may not interfere in this appeal. Learned A.P.P. Mr. J.K. Shah contended that in view of dying declaration Exh. 23 and complaint Exh. 31, the Deputy Mamalatdar has justified the dying declaration in his evidence. Learned A.P.P. Mr. J.K. Shah has relied on the decision of the Hon"ble Supreme Court in the case of Smt. Paniben Vs. State of Gujarat, wherein, in Para 18, it is observed as under:

18. 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 in 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. *Munnu Raja and Another Vs. The State of Madhya Pradesh*,

(ii) If the Court is satisfied that the dying declaration is true and voluntary, it can base conviction on it without corroboration. *State of Uttar Pradesh Vs. Ram Sagar Yadav and Others, Ramawati Devi Vs. State of Bihar*,

(iii) This Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased has opportunity to observe and identify the assailants and was in a fit state to make the declaration *K. Ramachandra Reddy and Another Vs. The Public Prosecutor*,

(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. *Rasheed Beg and Others Vs. State of Madhya Pradesh*,

(v) Where the deceased was unconscious and could never made any dying declaration the evidence with regard to it is to be rejected. *Kake Singh Alias Surendra Singh Vs. State of Madhya Pradesh*,

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. *Ram Manorath and Others Vs. State of Uttar Pradesh*,

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

(viii) Equally, merely because it is a brief statement, it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth. *Surajdeo Ojha and Others Vs. State of Bihar*,

(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. *Nanhau Ram and Another Vs. State of Madhya Pradesh*,

(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. Vs. Madan Mohan and Others,

4. Mr. Shah learned A.P.P. has also relied on the following decision of the Hon''ble Supreme Court in the case of Laxman Vs. State of Maharashtra, wherein, the Hon''ble Supreme Court has held that the Court must decide that the declarant was in a fit state of mind to make the declaration but where the eye-witnesses evidence (in the present case, the evidence of the Magistrate who had recorded the dying declaration) to that effect was available, mere absence of doctors certification as to the fitness of the declarants state of mind, held, would not ipso facto render the dying declaration unacceptable. The evidentiary value of such a declaration would depend on the facts and circumstances of the particular case. He has also relied on the decisions in the case of (1) Dhanaj Singh @ Shera and Others Vs. State of Punjab, ; (2) Panneersevlam v. State of Tamil Nadu, reported in 2008 (17) SCC 190; and (3) Prithvi (Minor) Vs. Mam Raj and Others,

5. We are unable to persuade ourselves to take a different view, than that taken by the learned trial Court, the reason being that the dying declaration which is given has its own value. The prosecution enunciated and reiterated the ratio laid down by the Hon''ble Supreme Court which will not permit us to take a different view than the view taken by the trial Court. The reason being that the learned trial Judge has not only believed the dying declaration but has considered the ocular version of the mother of the deceased and the uncle of the deceased who have been examined and categorically stated that there were differences between the husband and wife. The contention raised by the learned Advocate for the appellant are very trivial in nature and a rustic villager cannot describe properly in verbatim the incident. Even if the theory propounded by the learned Advocate is believed that she has committed suicide, there is nothing on record to suggest, except the first report. P.W. 6-Maluben Bhikhabhai Chudasama Exh. 30 has stated in her deposition that deceased Kantaben was doing labour work and the appellant was not doing any work. She further deposed that deceased Kantaben had told her that appellant had set her on fire by pouring kerosene. In her cross-examination, she stated that she is illiterate and she had no information what Mamlatdar had written. P.W. 7-Dr. Arjun Gorabhai Rathod Exh. 33, in his evidence stated that on 17-12-2004 at about 17-05 O'clock, when he was serving as Medical Officer, Civil Hospital, Junagadh, Deputy Mamlatdar had come to the Civil Hospital. Junagadh to record the dying declaration of deceased Kantaben, who was admitted in the hospital. He stated that at the time of recording of dying declaration, deceased Kantaben was conscious and was able to give dying declaration. He further stated that he informed that Deputy Mamlatdar that patient is in sound state of mind and able to given dying declaration and to that effect, he had made endorsement in the dying declaration, which is at Exh. 23. At the time of recording of dying declaration, there was nobody present except, witness, Deputy Mamlatdar and patient, He further stated that thumb impression of deceased on dying declaration was taken

in his presence. In that view of the matter, the conviction recorded by the trial Court cannot be found fault with and the present of the appellant-accused, motive and intention are established by the prosecution beyond reasonable doubt, and therefore, this appeal deserves to be dismissed.

6. We are in complete agreement with the findings, ultimate conclusion and resultant order of conviction and sentence passed by the trial Court and we are of the view that no other conclusion except the one reached by the trial Court is possible in the instant case as the evidence on record stands. Therefore, there is no valid reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence. In the result, this appeal is dismissed. The impugned judgment and order of conviction and sentence dated 8-8-2006 passed by the learned Presiding Officer, Addl. Sessions Judge, 6th Fast Track Court, Gondal in Sessions Case No. 20 of 2005, is hereby confirmed. Bail bond stands cancelled. R. & P. to be sent back to the trial Court, forthwith.