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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 08-11-2016****Judgment delivered on 07-03-2017****CRA No. 757 of 2003**

1. Smt. Mamta Verma, W/o Lakshmi Narayan Verma, aged about 23 years, R/o Shakti Nagar, Raipur, Present Address at PS & Village Charama, Dist. Kanker (CG).

---- Appellant

Versus

1. State Of Chhattisgarh, through PS Charama, Dist. Kanker (CG).

---- Respondent

For Appellant

Shri Manoj Paranjape, Advocate with
Shri Vaibhav A. Goverdhan & Shri
Prasoon Agrawal, Advocates

For Respondent/State

Shri Rajendra Tripathi, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Anil Kumar Shukla****C A V Judgment**

The judgment of the Court was delivered by

1. **Prashant Kumar Mishra, J.--** The appellant has been convicted under Section 302 of the Indian Penal Code (for short 'the IPC') and sentenced to undergo imprisonment for life for committing murder of Deepa Bachhani (since deceased) by setting her on fire at about 9.30 am on 26-4-2001.

2. Briefly stated, the facts are as follows :

The deceased and her husband were residing in the first floor of the house belonging to one Kundanmal, whereas the appellant's family reside in the ground floor of the same building. The deceased was alone in her house on 26-4-2001. The appellant made allegation on the deceased that she has committed theft of her ear rings (झुमका) and, thereafter, quarrel broke out between the appellant and the deceased. After some time, the appellant reached the first floor, sought kerosene oil from the deceased herself, thereafter, poured the kerosene oil on the body of the deceased and set her on fire by igniting matchstick, which she had brought with herself. Deceased climbed down in burning condition to open the water tap. Some persons saw the deceased, but no effort was made to save her. At the time of incident, the husband of the deceased had gone to the market for bringing vegetables. After his return, he took the deceased to the Mission Hospital, Dhamtari, wherefrom information was sent to the concerned police.

3. In course of investigation, dying declaration of the deceased was recorded by Jugal Kishore (PW-13), the Executive Magistrate/Naib Tahsildar at about 7.45 am on the date of

incident itself. The deceased succumbed to the injuries on the next day i.e. 27-4-2001.

4. Based on the dying declaration of the deceased and the case diary statements of other witnesses, the police filed the charge sheet and examined several witnesses namely; Naresh Kumar (PW-1), Brijlal (PW-2), Kundanmal (PW-3), Smt. Indira Devi (PW-4), Smt. Sunita Juri (PW-5), Ajay Panjwani (PW-6), Harvansh Sahu (PW-7), Santosh Sahu (PW-8), Dadu Ram (PW-9), Sadhu Ram Yadav (PW-10), Anup Bara (PW-11), Dwarika Prasad (PW-12), Jugal Kishore (PW-13), Somnath Singh (PW-14), Ashok Kumar (PW-15), Mangal Prasad (PW-16), Guniram (PW-17), Dr. Madan Lal Jain (PW-18), Mohd. Akhtar Nurani (PW-19), Omprakash Verma (PW-20), Dr. Arvind (PW-21), Sharad Singh Thakur (PW-22) & Santosh Singh (PW-23).
5. After completion of trial, the trial Judge has convicted the appellant, as stated *supra*, by placing reliance on the dying declaration of the deceased.
6. Shri Manoj Paranjape, learned counsel appearing for the appellant, would argue that the dying declaration is not reliable because there is no fitness certificate given by any doctor

certifying that the deceased was in fit mental state to record her dying declaration. Shri Paranjape would further argue that the conviction is not permissible only on the basis of dying declaration. To buttress his contention, learned counsel would place reliance upon the decisions rendered by the Supreme Court in **Papambaka Rosamma and Others v. State of A.P.**¹, **Ramilaben Hasmukhbhai Khristi v. State of Gujarat**², **Uka Ram v. State of Rajasthan**³ and **Javed Masood and Another v. State of Rajasthan**⁴ and the decision of this Court rendered in **Abdul Rasid; Jahida Begum v. State of Chhattisgarh**⁵.

7. Per contra, Shri Rajendra Tripathi, learned counsel appearing for the State, would support the impugned conviction on submission that there is no legal requirement of issuance of fitness certificate by Doctor before recording the dying declaration. Shri Tripathi would further submit that if on the overall analysis of evidence the Court reaches to the conclusion that the dying declaration appears to be uninfluenced by any extraneous consideration or it inspire confidence, the same can be relied upon for sustaining the conviction.

1 (1999) 7 SCC 695

2 (2002) 7 SCC 56

3 (2001) 5 SCC 254

4 (2010) 3 SCC 538

5 2012 Law Suit (Chh) 108 : Cr.A.No.290 of 2015 (decided on 2-2-2012)

8. We have heard learned counsel appearing for the parties at length and perused the original record.
9. Before considering the issue concerning reliability of the dying declaration, we would like to summarise the oral evidence adduced by the prosecution in course of trial.
10. Naresh Kumar (PW-1) is the husband of the deceased. He was not available in the house at the time of incident. In his examination-in-chief he would state that since he was shocked and not in proper mental state; the deceased did not disclose anything to him although he confirms the recording of dying declaration by the Tahsildar and in the same breath he says that at that time he was kept out of the room. This witness has been declared hostile, as he has resiled from his case diary statement, however, he supports the prosecution to say that the Tahsildar had recorded the dying declaration.
11. Brijlal (PW-2) is a relative of the deceased. He reached to the place of occurrence when the deceased had already claimed down to open the water tap. This witness had seen the deceased lying below the water tap. He would further say that on enquiry the deceased informed him that 'Doctorin Bai', to mean the appellant, who is wife of a Doctor, has set her on fire.

Kundanmal (PW-3) is the common landlord of the appellant and the deceased. He has not thrown much light over the incident, as he was not present on the spot.

12. Smt. Indira Devi (PW-4) is the wife of Brijlal (PW-2). She would also support the prosecution by deposing in her examination-in-chief that, on being asked, the deceased disclosed her that the appellant has set her on fire. Sunita Juri (PW-5) is a neighbour. According to this witness, she and the appellant were in conversation when they heard the shout 'save save' (*bachao bachao*) from the upstairs. Dadu Ram (PW-9) is also a neighbour who along with one Sharmji immediately reached the place of occurrence. He would also say that the deceased committed suicide by setting herself on fire. Jugal Kishore (PW-18) is the Executive Magistrate, who was recorded the dying declaration of the deceased. He has fully supported the case of the prosecution by proving the dying declaration (Ex.P/15).

13. Dr. Madan Lal Jain (PW-18) is a Senior Consultant (Burn & Plastic Surgery), MMI Hospital, Raipur, where the deceased was admitted with 85-90% burn injuries in the night of 26-4-2001. He has stated that at the time of examination, the deceased was uttering some words, which he could not understand. Sharad Thakur (PW-22) is the Head Constable,

who had recorded the case diary statement under Section 161 of the Cr.P.C. of the deceased, which has been proved as Ex.P/27. In this document also the deceased has made similar allegation against the appellant as stated by her in the dying declaration. This statement in form of entry in the *rojnamcha sanha* was made at about 13.25 hours i.e. within four hours of the incident.

14. In view of the fact that the impugned conviction is solely based on the dying declaration (Ex.P/15) recorded by Jugal Kishore (PW-13), it would be apt to state hereinafter the settled legal position as to when the conviction can be based on dying declaration with or without independent corroboration.

15. In **Khushal Rao v. State of Bombay**⁶, the Supreme Court held thus :

16. On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, aforesaid, (1) that 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; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (3)

6 AIR 1958 SC 22

that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (4) that 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; (5) that 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 (6) that 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, for example, whether there was sufficient light if the crime was committed at night; 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.

17. Hence, 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, as held in some of the reported cases, but from the fact that the court, in a given case, has come to the conclusion that that particular dying declaration was not free from the infirmities referred to above or from such other infirmities as may be disclosed in evidence in that case.

16. The Supreme Court in **Lallubhai Devchand Shah and Others**

v. The State of Gujarat⁷ held that a dying declaration must be

closely scrutinized as to its truthfulness like any other important piece of evidence in the light of the surrounding facts and

circumstances of the case, bearing in mind, on the one hand,

that the statement is by a person who has not been examined in

the Court on oath and, on the other hand, that the dying man is

normally not likely to implicate innocent persons falsely. It was

further observed that there can be no doubt that when a dying

declaration is recorded the person who records the statement

must be satisfied that the person who makes the statement is

consciously making the statement understanding the

7 1971 (3) SCC 767

implications of the words he uses. The expression 'fit state of mind' used in the case referred to above means no more than that. Negating the plea of commission of suicide by the deceased in the said case, the Supreme Court observed that no sufficient material has been placed before the Court to show that the deceased committed suicide nor any previous history of attempting to commit suicide or showing disgust for life and further that it is not shown what impelled her to commit suicide on that day

17. In **State of Uttar Pradesh v. Ram Sagar Yadav and Others**⁸, the Supreme Court held that it is settled that, as a matter of law, a dying declaration can be acted upon without corroboration. Referring to **Khushal Rao** (supra), **Harbans Singh and another v. The State of Punjab**⁹ and **Gopalsingh and Another v. State of Madhya Pradesh and Another**¹⁰ it is further observed that there is not even a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated. The primary effort of the Court has to be to find out whether the dying declaration is true. If it is, no question of corroboration arises. It is only if the circumstances surrounding the dying declaration are not clear of

8 AIR 1985 SC 416

9 AIR 1962 SC 439

10 (1972) 3 SCC 268

convincing that the Court may, for its assurance, look for corroboration to the dying declaration.

18. In **State of Orissa v. Parasuram Naik**¹¹ the Supreme Court did not consider the dying declaration to be reliable because the deceased died within 15 minutes of suffering extensive burn injuries.

19. Once again in **Paparambaka Rosamma** (supra) the Supreme Court refused to sustain the conviction for the reason that the deceased suffered 90% burn injuries and there was no certification by the Doctor that the injured was in fit state of mind at the time of making the dying declaration.

20. In **Laxmi (Smt.) v. Om Prakash and Others**¹² the Supreme Court reiterated the principle that the conviction can be solely based on dying declaration, but Court can look for corroboration if the dying declaration suffers from infirmities. The Supreme Court also held that dying declaration made to police officer is also admissible in evidence, but ordinarily it should be recorded by Magistrate except where deceased was in such precarious condition that the police officer himself had to record the statement.

11 (1997) 11 SCC 15

12 (2001) 6 SCC 118

21. In **Panchdeo Singh v. State of Bihar**¹³ the Supreme Court reiterated the principle that if the dying declaration inspires the confidence of the Court, it can be acted upon for convicting the accused and corroboration would be necessary in case of infirmity only. However, in **Ramilaben Hasmukhbhai Khristi** (supra) the Supreme Court though reiterated the principles but went further to observe that a dying declaration is generally to be recorded by an Executive Magistrate with the certificate of a medical doctor about the mental fitness of the declarant to make the statement. It may be in the form of question and answer and the answers be written in the words of the person making the declaration. But the Court cannot be too technical and in substance if it feels convinced about the trustworthiness of the statement which may inspire confidence such a dying declaration can be acted upon without any corroboration. In this case, the Supreme Court raised a doubt on the dying declaration recorded by the Executive Magistrate because it was not in question-answer form, but was lengthy narration of what the deceased had spoken.
22. In **Lakhan v. State of Madhya Pradesh**¹⁴ the Supreme Court has considered almost all important previous decisions starting

13 (2002) 1 SCC 577

14 (2010) 8 SCC 514

from **Kushal Rao** (supra) stating that the doctrine of dying declaration is enshrined in the legal maxim *nemo moriturus praesumitur mentire*, which means 'a man will not meet his Maker with a lie in his mouth' and referring to Section 32 of the Evidence Act, 1872 it was held that the dying declaration is, in fact, the statement of a person, who cannot be called as witness and, therefore, cannot be cross-examined. Such statements themselves are relevant facts in certain cases. Referring to **Munnawar and Others v. State of Uttar Pradesh and Others**¹⁵ it was observed that a dying declaration can be relied upon if the deceased remained alive for a long period of time after the incident and died after recording of the dying declaration. There may be evidence to show that his condition was not overtly critical or precarious when the dying declaration was recorded. **Paras Yadav and Others v. State of Bihar**¹⁶ was referred to reiterate that a statement of the deceased recorded by a police office in a routine manner as a complaint and not as a dying declaration can also be treated as dying declaration after the death of the inured and relied upon if the evidence of the prosecution witnesses clearly establishes that the deceased was conscious and was in a fit statement of health to make the statement. The Supreme Court,

15 (2010) 5 SCC 451

16 (1999) 2 SCC 126

thereafter, summarise the law in the following form in para 21 :

21. In view of the above, the law on the issue of dying declaration can be summarised to the effect that in case the court comes to the conclusion that the dying declaration is true and reliable, has been recorded by a person at a time when the deceased was fit physically and mentally to make the declaration and it has not been made under any tutoring/duress/prompting; it can be the sole basis for recording conviction. In such an eventuality no corroboration is required. In case there are multiple dying declarations and there are inconsistencies between them, generally, the dying declaration recorded by the higher officer like a Magistrate can be relied upon, provided that there is no circumstance giving rise to any suspicion about its truthfulness. In case there are circumstances wherein the declaration had been made, not voluntarily and even otherwise, it is not supported by the other evidence, the court has to scrutinise the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance.

23. The Supreme Court in a very recent case rendered in **Gulzari Lal v. State of Haryana**¹⁷ held that a valid dying declaration may be made without obtaining a certificate of fitness of declarant by a medical officer. While observing reference has been made to **Laxman v. State of Maharashtra**¹⁸.

17 (2016) 4 SCC 583

18 (2002) 6 SCC 710

24. There are three versions appearing from the record about the health condition or mental fitness of the deceased, which may assist us to find out whether the deceased was in a fit state of mind.
25. The husband of the deceased namely; Naresh Kumar (PW-1) has turned hostile. He stated that the deceased did not make any declaration to him, however, the witness himself was not fit enough because in the examination-in-chief he has stated that he was shocked and not in his senses. He supports the recording of dying declaration by the Executive Magistrate at Mission Hospital, however, while cross-examined he says that his wife was unconscious. Contrary to this, the second version is of Brijlal (PW-2) and Indira Devi (PW-4). Brijlal (PW-2) is the brother-in-law of Naresh Kumar (PW-1). Thus, he was more close to Naresh Kumar (PW-1) than to the deceased and yet these witnesses would support the prosecution. They are, in fact, witnesses of oral dying declaration also. The deceased informed these two witnesses that the accused is the 'Doctorin Bai', who has set her on fire. Third version is of the Executive Magistrate Jugal Kishore (PW-13) who has recorded the dying declaration after finding the deceased in fit state of mind. Another set of witnesses are Sunita Juri (PW-5), Ajay Panjwani

(PW-6) and Dadu Ram (PW-9) who immediately reached to the place of occurrence, but have not stated that soon after the incident the deceased fell unconscious. As a matter of fact, Dadu Ram (PW-9) is another witness of dying declaration in support of the appellant because this witness would state that the deceased informed him that she has committed suicide, however, it is not the specific case of the appellant in her accused statement that the deceased has committed suicide.

26. Ex.P/27 is the first document prepared by the police recorded in the form of *rojnamcha sanha* at 13.25 hours on the date of incident i.e. within four hours of the incident, wherein the Head Constable Sharad Thakur (PW-22) has recorded that after receiving information from the hospital about the admission of a patient with burn injuries he went to make enquiry and recorded the statement of Naresh Kumar (PW-1) and the dying declaration of the deceased wherein she informed that the wife of the Doctor Sahab i.e. the appellant set her on fire on account of dispute regarding theft of ear rings. This document has been proved by the Constable and it fully corroborates the dying declaration (Ex.P/15).

27. Now examining the dying declaration itself, which is recorded in question and answer form at about 7.45 pm on 26-4-2001. It

lasted for about 20 minutes as the time of conclusion of writing the statement is recorded as 8.05 pm. The dying declaration clearly incriminates the appellant in setting the deceased on fire. It starts with the question as to whether she can speak to which the deceased responded in the affirmative. Although it does not contain any certification by the Doctor about the mental fitness of the deceased, but since Dadu Ram (PW-9) has also stated that the deceased spoke to him about the incident, her mental fitness after being administered medicine in the hospital cannot be doubted.

28. The deceased was admitted in the MMI Hospital, Raipur, at 10.35 pm which is manifest from the document of the said hospital (Ex.P/17) recording that the deceased had suffered 80-90% flame burn. There is another document of Dhamtari Christian Hospital (Ex.P/19) and the case summary prepared by MMI Hospital, Raipur vide Ex.P/23 without mentioning that the deceased was unconscious.

29. Considering the evidence, it does not appear that the deceased was either unconscious or was not in a fit mental condition to record her statement. Jugal Kishore (PW-13), Executive Magistrate, who recorded the statement of the deceased has supported the dying declaration. No suggestion has been made

to this witness that the deceased was unconscious or she was not able to speak. On the contrary it was suggested to him that the deceased was speaking Sindhi language meaning thereby that the Executive Magistrate being not well versed with the Sindhi language was unable to understand as to the words spoken by the deceased. In addition to the dying declaration proved by the Executive Magistrate, there are two other witnesses namely; Brijlal (PW-2) and Indira Devi (PW-4), who are closely related to the husband of the deceased. Brijlal (PW-2) and Indira Devi (PW-4) are the witnesses to the oral dying declaration made by the deceased to them soon after the incident and, as such, it is not a case where the dying declaration is without any corroboration.

30. Reading the written dying declaration along with the oral dying declaration and there being no document by any of the two hospitals where the deceased was treated mentioning that the deceased was unconscious, we have found the dying declaration to be fully trustworthy and being capable of acted upon for convicting the appellant.
31. In view of the settled legal position that if a dying declaration inspires confidence of the Court to sustain conviction, it can be

acted upon, we have not found any reason or ground to interfere with the impugned judgment.

32. Thus, appreciating the evidence and giving effect to the same in its totality, it would clearly appear that the prosecution has fully established its case beyond all reasonable doubts. The appellant has rightly been held guilty for committing offence punishable under Section 302 of the IPC. The finding of guilt recorded by the trial Court is fully borne out from the evidence available on record.

33. As an upshot, the appeal fails and is hereby dismissed. The appellant is on bail. Her bail bonds are cancelled and she be taken into custody forthwith to serve out the remaining period of sentence imposed upon her.

Sd/-

Sd/-

Judge
Prashant Kumar Mishra

Judge
Anil Kumar Shukla

Gowri