State Of U.P. vs Veerpal on 1 February, 2022

Author: M. R. Shah

Bench: B. V. Nagarathna, M. R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 34 OF 2022

State of U.P. ..Appellant(S)

Versus

Veerpal & Anr. ..Respondent(S)

JUDGMENT

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 30.05.2020 passed by the Division Bench of the High Court of Judicature at Allahabad in Criminal Appeal No. 4658 of 2015 by which the High Court has allowed the said appeal preferred by the respondents herein – original accused and has acquitted the accused for the offences under Section 302 read with Section 34 of the IPC, the State has preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:□2.1 That PW□1 Bengali Babu gave the First Information Report which was registered as Crime No.1144/11 initially for the offences under Section 326 of the IPC to the effect that on 20.12.2011 at about 2:30 pm, he got a call from Radha – daughter of the deceased that her mother had got burnt. He immediately reached the hospital and at that time SDM was taking the deceased's statement. According to him, the girl told that her father□in□law and mother□in□law demanded the money and when she refused there was an assault and thereafter they poured kerosene over her and with a burning matchstick burnt her. The Investigating Officer started the investigation. He recorded the statements of the relevant witnesses and collected the necessary evidence including the medical evidence. After completion of investigation, Investigating Officer filed the charge□sheet against the accused for the offences under Section 302 read with Section 34 of the IPC. The learned Trial Court framed the charge against the accused for the aforesaid offences. The accused denied the charge and pleaded not guilty. Therefore,

they claimed to be tried by the Trial Court for the aforesaid offences.

2.2 To prove the charge against the accused, the prosecution examined as many as 10 witnesses. PW□5 turned hostile. The prosecution also brought on record documentary evidences including two dying declarations, one recorded by the police officer and another, recorded by the Magistrate/SDM. On appreciation of evidence and considering two dying declarations, the learned Trial Court believed the dying declaration recorded by the Magistrate on 22.12.2011 and further observed that the defence put forth on behalf of the accused that the deceased herself poured the kerosene on her is not believable considering the medical evidence on record. Thereafter the learned Trial Court convicted the accused for the offences under Section 302 read with Section 34 of the IPC and sentenced the accused to undergo life imprisonment.

3. Feeling aggrieved and dissatisfied with the judgment and order of conviction and sentence imposed by the Trial Court, the accused preferred the appeal before the High Court being Criminal Appeal No.4658/2015. By the impugned judgment and order, the High Court has acquitted the accused mainly on the ground that there were two dying declarations, one recorded on 20.12.2011 and another recorded on 22.12.2011 and there was a gap of two days between the two dying declarations. The High Court instead of relying on the dying declaration recorded by SDM/Deputy Commissioner of Agra and by disbelieving both the dying declarations has acquitted the accused by observing that according to the deceased when she was forced to give the money and when she refused, the accused tried to assault and she ran away and under the pressure she might have poured the kerosene on her.

4. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, acquitting the accused for the offences under Section 302 read with Section 34 of the IPC, the State has preferred the present appeal.

5. Ms. Garima Prashad, learned Senior Advocate appearing on behalf of the State has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a grave error in acquitting the accused for the serious offences under Section 302 read with Section 34 of the IPC.

5.1 It is further submitted by the learned Senior Advocate appearing on behalf of the State that in the present case, the High Court ought to have relied upon and considered the dying declaration recorded by the competent magistrate. 5.2 It is submitted that as such cogent reasons were given by the Trial Court on appreciation of evidence that the statement before the IO which was considered to be first dying declaration on 20.12.2011 does not inspire any confidence. It is submitted that the aforesaid finding recorded by the learned Trial Court was on appreciation of available evidence on record more particularly the medical evidence.

5.3 It is submitted that the High Court ought to have appreciated that the dying declaration recorded by a competent Magistrate would stand on a higher footing than the declaration made to IO under Section 161 of Cr.PC. Reliance is placed upon the decisions of this Court in the cases of Ravi Chander & Ors. V. State of Punjab (1998) 9 SCC 303 (para 6); Harjit Kaur V. State of Punjab

(1999) 6 SCC 545, (para 6); Koli Chunilal Savji & Anr. V. State of Gujarat (1999) 9 SCC 562 (para 8); Vikas & Ors. V. State of Maharashtra (2008) 2 SCC 516 (para 48); Laxman V. State of Maharashtra (2002) 6 SCC 710 and Jagbir Singh V. State (NCT of Delhi) (2019) 8 SCC 779 (para 21). 5.4 It is submitted that in the present case as such the High Court has specifically observed that both the dying declarations cannot be believed and it is not safe to rely upon multiple dying declarations of the deceased. It is submitted that the High Court has observed that it would not be safe to rely upon multiple dying declarations of the deceased in the absence of any corroborative evidence. It is submitted that the aforesaid is contrary to the law laid down by this Court in the cases of Amol Singh V. State of M.P., (2008) 5 SCC 468 (para 13); Kundula Bala Subrahmanyam & Anr. V. State of Andhra Pradesh (1993) 2 SCC 684 (para 18); Munnu Raja & Anr. V. State of M.P., (1976) 3 SCC 104 (para 6). It is submitted that as held by this Court in the aforesaid decisions there can be conviction on the basis of a dying declaration of the deceased without there being any corroborative evidence on record.

5.5 It is submitted that in the present case, the High Court has erred in not relying upon the dying declarations more particularly the dying declaration recorded by the Magistrate/SDM without any cogent reason. It is submitted that as such the High Court has not doubted the credibility and/or has not observed anything with regard to malice on the part of the executive magistrate who recorded the statement on 22.12.2011. It is submitted therefore the High Court ought to have upheld the conviction relying upon the dying declaration recorded by the Magistrate/SDM on 22.12.2011.

5.6 It is hence submitted that the impugned judgment and order passed by the High Court is not sustainable and the impugned judgment and order deserves to be quashed and set aside and the judgment and order passed by the learned Trial Court convicting the accused under Section 302 read with Section 34 of the IPC deserves to be upheld/restored.

6. The present appeal is vehemently opposed by Shri P.S. Khurana, learned counsel appearing on behalf of the respondents – original accused. It is vehemently submitted by learned counsel appearing on behalf of the original accused that in the facts and circumstances of the case and in view of multiple dying declarations, the High Court has rightly acquitted the accused.

6.1 It is submitted that as rightly observed by the High Court once the dying declaration was recorded by the police officer on 20.12.2011, thereafter there was no reason to record another dying declaration on 22.12.2011. 6.2 It is submitted that in the first dying declaration recorded on 20.12.2011 she stated that out of fear of father-in-law, she committed suicide and the role assigned to respondent No.1 – father-in-law in her first dying declaration dated 20.12.2011 was only of chasing her for beating and not for burning, and in the second dying declaration recorded by the Magistrate, there was a somersault and the victim – deceased implicated all other family members, the High Court has rightly refused to rely upon the dying declaration recorded by the Magistrate/SDM on 22.12.2011. 6.3 It is submitted that on appreciation of evidence, the High Court has observed that the deceased was mentally weak. It is submitted that therefore in such a state of mind and because of the fear of her father-in-law that she will be beaten when she refused to give the money, she committed suicide by pouring kerosene on herself; no case of murder has been made out and therefore, the High Court has rightly acquitted the accused for the offences punishable

under Section 302 read with Section 34 of the IPC.

7. Making the above submissions, it is prayed to dismiss the present appeal.

8. We have heard the learned counsel appearing on behalf of the respective parties at length.

9. At the outset, it is required to be noted in the present case, there are two dying declarations, one recorded by the Police Officer on 20.12.2011 and another recorded by the Magistrate/SDM recorded on 22.12.2011. Even in the impugned judgment and order, the High Court has as such specifically observed that none of the dying declarations inspire confidence. The High Court has not believed the dying declaration recorded by the Magistrate/SDM on 22.12.2011 mainly on the ground that when the dying declaration was already recorded by the Police Officer on 20.12.2011, there was no reason to record the second dying declaration. However, it is required to be noted that what was recorded by the Police Officer on 20.12.2011 was the statement under Section 161 Cr.PC. Therefore, it was thought fit to record the dying declaration of the deceased by the Magistrate and that is why SDM was called to record the dying declaration of deceased on 22.12.2011. At the cost of repetition, it is observed that even the High Court has specifically observed that the first statement/dying declaration recorded by the Police on 20.12.2011 does not inspire any confidence. In that view of the matter, it is required to be considered whether the dying declaration recorded by the Magistrate on 22.12.2011 is to be believed or not and whether on the basis of such dying declaration recorded by the Magistrate/SDM, the accused can be convicted or not.

9.1 While considering the aforesaid question/issue a few decisions of this Court on the credibility of the dying declaration recorded by the Magistrate are required to be referred to.

9.1.1 In the case of Laxman (supra) after referring to and considering the earlier decisions on the credibility of the dying declaration recorded by the Magistrate, it was observed that the Magistrate being a disinterested witness and 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. 9.1.2 In the case of Jagbir Singh (supra) this Court had an occasion to consider the law relating to the dying declaration and the problem of multiple dying declarations in detail. It was observed and held that merely because there are two/multiple dying declarations, all the dying declarations are not to be rejected. It was observed and held that when there are multiple dying declarations the case must be decided on the facts of each case and the court will not be relieved of its duty to carefully examine the entirety of the material on record as also the circumstances surrounding the making of the different dying declarations. Ultimately, in paragraph 32, this Court concluded as under: ☐"Our conclusion on multiple dying declarations 32 We would think that on a conspectus of the law as laid down by this Court, when there are more than one dying declaration, and in the earlier dying declaration, the accused is not sought to be roped in but in the later dying declaration, a somersault is made by the deceased, the case must be decided on the facts of each case. The court will not be relieved of its duty to carefully examine the entirety of materials as also the circumstances surrounding the making of the different dying declarations. If the court finds that the incriminatory dying declaration brings out the truthful position particularly in conjunction with

the capacity of the deceased to make such declaration, the voluntariness with which it was made which involves, no doubt, ruling out tutoring and prompting and also the other evidence which support the contents of the incriminatory dying declaration, it can be acted upon. Equally, the circumstances which render the earlier dying declaration, worthy or unworthy of acceptance, can be considered." Similar views have been expressed by this Court in the case of Ravi Chander & Ors. (supra), Harjit Kaur (supra), Koli Chunilal Savji & Anr. (supra) and Vikas & Ors. (supra).

10. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, it is required to be considered whether the dying declaration recorded by the Magistrate on 22.12.2011 is to be believed or not. Nothing is on record with regard to any allegation against the Magistrate/SDM to the effect that he was biased or interested in recording the dying declaration against the accused. He was summoned during the course of investigation and during the course of investigation he recorded the dying declaration and the statement of deceased. Even the High Court as such has not doubted the credibility of the dying declaration recorded by the Magistrate/SDM on the ground of malice. The reasoning given by the High Court to not rely upon the dying declaration recorded by the Magistrate/SDM is not germane and cannot be accepted. We see no reason to doubt the dying declaration recorded by the Magistrate on 22.12.2011 in which the deceased specifically stated that at 11:00 am due to the feud over demanding money, respondents – accused have burned her after pouring kerosene over her. Therefore, in the statement of dying declaration recorded by the Magistrate on 22.12.2011, the respondents – original accused are specifically named and it is specifically stated that they poured kerosene on her. At this stage, it is required to be noted that in so far as the statement recorded by the IO on 20.12.2011, it was recorded that the father□in□law demanded money and started beating her with a stick, she ran away and she locked the door from inside and out of anger she poured the kerosene available in the room and set herself on blaze is concerned, considering the medical evidence on record the said statement/ dying declaration recorded by the Police Officer on 20.12.2011 does not inspire any confidence. Medical evidence does not support the version stated in the said dying declaration. It is to be noted that even according to the accused, the father□in□law took her to hospital. If statement of deceased in first dying declaration that she locked the door from inside and out of anger she poured kerosene is accepted, in that case it is not explained by the accused as to how she was taken to the hospital, as nothing is on record that the door was broken/opened by the father□in□law – accused and thereafter she was taken to hospital. Even considering the medical evidence on record and the injuries sustained by the deceased, it is found that there were no injuries at all on the chest and injuries were found on the head and on the backside. As rightly observed by the Trial Court if she had committed suicide by pouring kerosene there would have been injuries on the chest as well as injuries would not have been on the head and on the backside. In our view, such injuries as found on the body of the deceased could have been possible only if somebody had poured kerosene on her from behind her. The aforesaid aspect has not at all been considered by the High Court.

10.1 Now, on the aspect, whether in absence of any corroborative evidence, there can be a conviction relying upon the dying declaration only is concerned, the decision of this Court in the case of Munnu Raja & Anr. (supra) and the subsequent decision in the case of Paniben (Smt) V. State of Gujarat, (1992) 2 SCC 474 are required to be referred to. In the aforesaid decisions, it is specifically observed and held that there is neither a rule of law nor of prudence to the effect that a dying declaration

cannot be acted upon without a corroboration. It is observed and held that if the Court is satisfied that the dying declaration is true and voluntary it can base its conviction on it, without corroboration. Similar view has also been expressed in the cases of State of Uttar Pradesh V. Ram Sagar Yadav & Ors. (1985) 1 SCC 552 and Ramawati Devi V. State of Bihar, (1983) 1 SCC 211. Therefore, there can be a conviction solely based upon the dying declaration without corroboration. 10.2 Kushal Rao V. State of Bombay, AIR 1958 SC 22:1958 SCR 552 is a watershed judgment on the law on the evidentiary value of dying declarations. This Court laid down the following principles as to the circumstances under which a dying declaration may be accepted, without corroboration: □ "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) 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." The relevant facts of the said case are that the deceased therein had given three successive dying declarations within a span of two hours, which were, to a certain degree contradictory to each other. However, one of the aspects that remained common and was narrated by the deceased in all three dying declarations was that he was attacked by two persons, namely Kushal Rao and Tukaram with swords and spears. This Court, relying on the common thread running through all dying declarations, which was consistent with medical evidence revealing punctured and incised wounds on various parts of the body, held that the said declarations could be relied upon in convicting the accused who had been named in all three dying declarations.

Co□relating the said facts to the facts of the instant case, we have noted that although the accused was not specifically named by the deceased in her statement recorded under section 161 of the Cr.PC, as the person who set the deceased on fire, he has been so named in her dying declaration. Even in the statement recorded under section 161 of the Cr.PC, the deceased has stated that her father□in□law had attacked her with a stick with an intention to kill her and as a result, she locked herself in the room and set herself ablaze. Therefore, we find that there runs a common thread in the statements of the deceased, being that she was attacked by the accused□respondent herein. Further,

we also find that the statements made by the deceased in her dying declaration are consistent with medical evidence which reveals that there were burns on all parts of the body except chest and sides of the abdomen and back. The burns are at such parts as could have resulted when a person, other than the deceased poured kerosene and set fire. As already noted, if the deceased had set herself on fire, her chest ought to have been burnt. In light of the aforesaid discussion and the decision in Kushal Rao (supra), we find that the medical evidence is consistent with the dying declaration, thereby allowing this Court to place reliance on the declarations.

The Trial Court has rightly observed as to the weight and reliance that must be placed on the dying declaration of the deceased. There was no reason for the High Court to disregard the dying declaration of the deceased. It is noted that the dying declaration was made by the deceased to Sub□ Divisional Magistrate (SDM) Bal Kishan Agarwal, who was also examined as a prosecution witness (PW□6) before the Trial Court. His statement reveals that the deceased at the time of making the statements, was fully conscious and capable of comprehending the questions put forth by the officer to whom the declaration was made. The evidentiary value of the dying declaration is further enhanced by the fact that it was accompanied by a certificate from the physician who was treating the deceased prior to her death, stating that the deceased remained fully conscious while making the statement. The Trial Court rightly placed reliance on the dying declaration having due regard to the statements made by the physician as to the medical condition of the deceased while making such declaration. The Trial Court has also rightly noted that the statements of the SDM and the physician, being independent witnesses in the trial, has added weight to the prosecution case as the same could not be motivated by malice.

11. Therefore, considering the dying declaration recorded by the SDM/Magistrate on 22.12.2011 the accused can be convicted for which they were tried. Hence in our view, the High Court has committed a grave error in acquitting the accused. The impugned judgment and order passed by the High Court acquitting the accused for the offences punishable under Section 302 read with Section 34 of the IPC is unsustainable and the same deserves to be quashed and set aside.

12. In view of the above and for the reasons stated above, the present appeal is allowed. The impugned judgment and order acquitting the accused for the offences punishable under Section 302 read with Section 34 of the IPC is hereby quashed and set aside. The judgment and order passed by the learned Trial Court convicting the accused for the offences punishable under Section 302 read with Section 34 of the IPC is hereby restored. Respondent Nos. 1 & 2 – original accused are held guilty for the offences punishable under Section 302 read with Section 34 of the IPC and sentenced to undergo imprisonment for life and a fine of Rs.10,000/□each as awarded by the learned Trial Court. Accused to surrender before concerned court or jail authority to undergo life sentence forthwith. The present appeal is allowed to the aforesaid extent.

.....J. (M. R. SHAH) .....J. (B. V. NAGARATHNA) New Delhi, 01.02.2022